

AMENDED IN SENATE AUGUST 20, 2014

AMENDED IN SENATE JUNE 15, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2186

Introduced by Assembly Member Lowenthal
(Coauthor: Senator Anderson)

February 20, 2014

An act to amend Section 1370 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2186, as amended, Lowenthal. Defendants: competency.

Existing law provides that if a defendant in a criminal proceeding is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent. Existing law provides that the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, *as directed by the State Department of State Hospitals*, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified. Existing law further specifies commitment proceedings to include circumstances for the voluntary and involuntary administration of antipsychotic medication.

This bill would require the court to consider opinions developed by examining medical professionals during the inquiry determining mental competence when the court is determining if the defendant lacks the

capacity to make decisions regarding the administration of antipsychotic medication.

Existing law provides that if the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate for the defendant, antipsychotic medication may be administered to the defendant for a maximum of 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment.

This bill would authorize a court to extend the administrative law judge's order authorizing involuntary medication for 14 days beyond the 21-day certification period upon a finding of good cause or by stipulation of the parties. The bill would authorize the district attorney, county counsel, or representative of any facility where a defendant found incompetent to stand trial is committed, to petition the court for an order to administer involuntary medication.

Existing law provides that an order by the court authorizing involuntary medication of the defendant is valid for one year. Existing law requires the court to review the order 6 months after it is made to determine if the grounds for the authorization remain. Existing law requires the medical director of the state hospital or other treatment facility to which the defendant is confined to make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence, within 90 days of commitment, and thereafter, at 6-month intervals or until the defendant becomes mentally competent.

This bill would require the court to review its order authorizing involuntary medication at the time of review of the initial progress report and in conjunction with the 6-month intervals described above. The bill would provide that within 60 days of the expiration of the one year involuntary medication order, the district attorney, county counsel, or representative of the facility where the defendant is being treated may petition the committing court for a one year renewal, and would require the petition to include the basis for involuntary medication. The bill would require notice of the petition to the defendant, the defendant's attorney, and the district attorney, and would require the court to hear and determine whether the defendant continues to meet the criteria for involuntary medication. The bill would require the 90-day and 6-month

reports described above regarding progress towards competence to also address whether the administration of antipsychotic medication remains necessary.

This bill would incorporate additional changes to Section 1370 of the Penal Code, proposed by AB 2625 and SB 1412, that would become operative only if this bill and either or both of those bills are chaptered and become effective January 1, 2015, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1370 of the Penal Code is amended to
2 read:

3 1370. (a) (1) (A) If the defendant is found mentally
4 competent, the criminal process shall resume, the trial on the
5 offense charged shall proceed, and judgment may be pronounced.

6 (B) If the defendant is found mentally incompetent, the trial or
7 judgment shall be suspended until the person becomes mentally
8 competent.

9 (i) In the meantime, the court shall order that the mentally
10 incompetent defendant be delivered by the sheriff to a state hospital
11 for the care and treatment of the mentally disordered, as directed
12 by the State Department of State Hospitals, or to any other available
13 public or private treatment facility, including a local county jail
14 treatment facility or the community-based residential treatment
15 system established pursuant to Article 1 (commencing with Section
16 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and
17 Institutions Code if the facility has a secured perimeter or a locked
18 and controlled treatment facility, approved by the community
19 program director that will promote the defendant's speedy
20 restoration to mental competence, or placed on outpatient status
21 as specified in Section 1600.

22 (ii) However, if the action against the defendant who has been
23 found mentally incompetent is on a complaint charging a felony
24 offense specified in Section 290, the prosecutor shall determine
25 whether the defendant previously has been found mentally
26 incompetent to stand trial pursuant to this chapter on a charge of
27 a Section 290 offense, or whether the defendant is currently the
28 subject of a pending Section 1368 proceeding arising out of a

1 charge of a Section 290 offense. If either determination is made,
2 the prosecutor shall so notify the court and defendant in writing.
3 After this notification, and opportunity for hearing, the court shall
4 order that the defendant be delivered by the sheriff to a state
5 hospital, as directed by the State Department of State Hospitals,
6 or other secure treatment facility for the care and treatment of the
7 mentally disordered unless the court makes specific findings on
8 the record that an alternative placement would provide more
9 appropriate treatment for the defendant and would not pose a
10 danger to the health and safety of others.

11 (iii) If the action against the defendant who has been found
12 mentally incompetent is on a complaint charging a felony offense
13 specified in Section 290 and the defendant has been denied bail
14 pursuant to subdivision (b) of Section 12 of Article I of the
15 California Constitution because the court has found, based upon
16 clear and convincing evidence, a substantial likelihood that the
17 person's release would result in great bodily harm to others, the
18 court shall order that the defendant be delivered by the sheriff to
19 a state hospital for the care and treatment of the mentally
20 disordered, as directed by the State Department of State Hospitals,
21 unless the court makes specific findings on the record that an
22 alternative placement would provide more appropriate treatment
23 for the defendant and would not pose a danger to the health and
24 safety of others.

25 (iv) The clerk of the court shall notify the Department of Justice
26 in writing of any finding of mental incompetence with respect to
27 a defendant who is subject to clause (ii) or (iii) for inclusion in his
28 or her state summary criminal history information.

29 (C) Upon the filing of a certificate of restoration to competence,
30 the court shall order that the defendant be returned to court in
31 accordance with Section 1372. The court shall transmit a copy of
32 its order to the community program director or a designee.

33 (D) A defendant charged with a violent felony may not be
34 delivered to a state hospital or treatment facility pursuant to this
35 subdivision unless the state hospital or treatment facility has a
36 secured perimeter or a locked and controlled treatment facility,
37 and the judge determines that the public safety will be protected.

38 (E) For purposes of this paragraph, "violent felony" means an
39 offense specified in subdivision (c) of Section 667.5.

1 (F) A defendant charged with a violent felony may be placed
2 on outpatient status, as specified in Section 1600, only if the court
3 finds that the placement will not pose a danger to the health or
4 safety of others. If the court places a defendant charged with a
5 violent felony on outpatient status, as specified in Section 1600,
6 the court ~~must~~ *shall* serve copies of the placement order on defense
7 counsel, the sheriff in the county where the defendant will be
8 ~~placed~~ *placed*, and the district attorney for the county in which the
9 violent felony charges are pending against the defendant.

10 (2) Prior to making the order directing that the defendant be
11 committed to the State Department of State Hospitals or other
12 treatment facility or placed on outpatient status, the court shall
13 proceed as follows:

14 (A) The court shall order the community program director or a
15 designee to evaluate the defendant and to submit to the court within
16 15 judicial days of the order a written recommendation as to
17 whether the defendant should be required to undergo outpatient
18 treatment, or *be* committed to the State Department of State
19 Hospitals or to any other treatment facility. ~~No~~ A person shall *not*
20 be admitted to a state hospital or other treatment facility or placed
21 on outpatient status under this section without having been
22 evaluated by the community program director or a designee. The
23 community program director or designee shall evaluate the
24 appropriate placement for the defendant between the State
25 Department of State Hospitals, a local county jail treatment facility,
26 or the community-based residential treatment system based upon
27 guidelines provided by the State Department of State Hospitals.
28 If a local county jail treatment facility is selected, the State
29 Department of State Hospitals shall provide treatment at the county
30 jail treatment facility and reimburse the county jail treatment
31 facility for the reasonable costs of the bed during the treatment. If
32 the community-based residential treatment system is selected, the
33 State Department of State Hospitals shall provide reimbursement
34 to the community-based residential treatment system for the cost
35 of treatment as negotiated with the State Department of State
36 Hospitals. The six-month limitation in Section 1369.1 shall not
37 apply to individuals deemed incompetent to stand trial who are
38 being treated to restore competency within a county jail treatment
39 facility pursuant to this section.

(B) The court shall hear and determine whether the *defendant lacks capacity to make decisions regarding the administration of antipsychotic medication. The court shall consider opinions in the reports prepared pursuant to subdivision (a) of Section 1369, as applicable to the issue of whether the defendant lacks capacity to make decisions regarding the administration of antipsychotic medication, and shall proceed as follows:*

(i) The court shall hear and determine whether any of the following is true:

(I) The defendant lacks capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the patient will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to his or her physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and his or her condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

(II) The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in his or her being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

(III) The people have charged the defendant with a serious crime against the person or property, involuntary administration of antipsychotic medication is substantially likely to render the

1 defendant competent to stand trial, the medication is unlikely to
2 have side effects that interfere with the defendant's ability to
3 understand the nature of the criminal proceedings or to assist
4 counsel in the conduct of a defense in a reasonable manner, less
5 intrusive treatments are unlikely to have substantially the same
6 results, and antipsychotic medication is in the patient's best medical
7 interest in light of his or her medical condition.

8 (ii) If the court finds any of the conditions described in clause
9 (i) to be true, the court shall issue an order authorizing ~~the treatment~~
10 ~~facility to involuntarily administer~~ *involuntary administration of*
11 antipsychotic medication to the defendant when and as prescribed
12 by the defendant's treating ~~psychiatrist~~ *psychiatrist at any facility*
13 *housing the defendant for purposes of this chapter. The order shall*
14 *be valid for no more than one year, pursuant to subparagraph (A)*
15 *of paragraph (7).* The court shall not order involuntary
16 administration of psychotropic medication under subclause (III)
17 of clause (i) unless the court has first found that the defendant does
18 not meet the criteria for involuntary administration of psychotropic
19 medication under subclause (I) of clause (i) and does not meet the
20 criteria under subclause (II) of clause (i).

21 (iii) In all cases, the treating hospital, facility, or program may
22 administer medically appropriate antipsychotic medication
23 prescribed by a psychiatrist in an emergency as described in
24 subdivision (m) of Section 5008 of the Welfare and Institutions
25 Code.

26 (iv) If the court has determined that the defendant has the
27 capacity to make decisions regarding antipsychotic medication,
28 and if the defendant, with advice of his or her counsel, consents,
29 the court order of commitment shall include confirmation that
30 antipsychotic medication may be given to the defendant as
31 prescribed by a treating psychiatrist pursuant to the defendant's
32 consent. The commitment order shall also indicate that, if the
33 defendant withdraws consent for antipsychotic medication, after
34 the treating psychiatrist complies with the provisions of
35 subparagraph (C), the defendant shall be returned to court for a
36 hearing in accordance with subparagraphs (C) and (D) regarding
37 whether antipsychotic medication shall be administered
38 involuntarily.

39 (v) If the court has determined that the defendant has the
40 capacity to make decisions regarding antipsychotic medication

1 and if the defendant, with advice from his or her counsel, does not
2 consent, the court order for commitment shall indicate that, after
3 the treating psychiatrist complies with the provisions of
4 subparagraph (C), the defendant shall be returned to court for a
5 hearing in accordance with subparagraphs (C) and (D) regarding
6 whether antipsychotic medication shall be administered
7 involuntarily.

8 (vi) Any report made pursuant to paragraph (1) of subdivision
9 (b) shall include a description of any antipsychotic medication
10 administered to the defendant and its effects and side effects,
11 including effects on the defendant's appearance or behavior that
12 would affect the defendant's ability to understand the nature of
13 the criminal proceedings or to assist counsel in the conduct of a
14 defense in a reasonable manner. During the time the defendant is
15 confined in a state hospital or other treatment facility or placed on
16 outpatient status, either the defendant or the people may request
17 that the court review any order made pursuant to this subdivision.
18 The defendant, to the same extent enjoyed by other patients in the
19 state hospital or other treatment facility, shall have the right to
20 contact the patients' rights advocate regarding his or her rights
21 under this section.

22 (C) If the defendant consented to antipsychotic medication as
23 described in clause (iv) of subparagraph (B), but subsequently
24 withdraws his or her consent, or, if involuntary antipsychotic
25 medication was not ordered pursuant to clause (v) of subparagraph
26 (B), and the treating psychiatrist determines that antipsychotic
27 medication has become medically necessary and appropriate, the
28 treating psychiatrist shall make efforts to obtain informed consent
29 from the defendant for antipsychotic medication. If informed
30 consent is not obtained from the defendant, and the treating
31 psychiatrist is of the opinion that the defendant lacks capacity to
32 make decisions regarding antipsychotic medication based on the
33 conditions described in subclause (I) or (II) of clause (i) of
34 subparagraph (B), the treating psychiatrist shall certify whether
35 the lack of capacity and any applicable conditions described above
36 exist. That certification shall contain an assessment of the current
37 mental status of the defendant and the opinion of the treating
38 psychiatrist that involuntary antipsychotic medication has become
39 medically necessary and appropriate.

(D) (i) If the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate pursuant to subparagraph (C), antipsychotic medication may be administered to the defendant for not more than 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment. The treating psychiatrist shall present the case for the certification for involuntary treatment and the defendant shall be represented by an attorney or a patients' rights advocate. The attorney or patients' rights advocate shall be appointed to meet with the defendant no later than one day prior to the medication review hearing to review the defendant's rights at the medication review hearing, discuss the process, answer questions or concerns regarding involuntary medication or the hearing, assist the defendant in preparing for the hearing and advocating for his or her interests at the hearing, review the panel's final determination following the hearing, advise the defendant of his or her right to judicial review of the panel's decision, and provide the defendant with referral information for legal advice on the subject. The defendant shall also have the following rights with respect to the medication review hearing:

(I) To ~~being~~ *be* given timely access to the defendant's records.

(II) To be present at the hearing, unless the defendant waives that right.

(III) To present evidence at the hearing.

(IV) To question persons presenting evidence supporting involuntary medication.

(V) To make reasonable requests for attendance of witnesses on the defendant's behalf.

(VI) To a hearing conducted in an impartial and informal manner.

(ii) If the administrative law judge determines that the defendant either meets the criteria specified in subclause (I) of clause (i) of subparagraph (B), or meets the criteria specified in subclause (II) of clause (i) of subparagraph (B), then antipsychotic medication may continue to be administered to the defendant for the 21-day certification period. Concurrently with the treating psychiatrist's certification, the treating psychiatrist shall file a copy of the certification and a petition with the court for issuance of an order

1 to administer antipsychotic medication beyond the 21-day
2 certification period. For purposes of this subparagraph, the treating
3 psychiatrist shall not be required to pay or deposit any fee for the
4 filing of the petition or other document or paper related to the
5 petition.

6 (iii) If the administrative law judge disagrees with the
7 certification, medication may not be administered involuntarily
8 until the court determines that antipsychotic medication should be
9 administered pursuant to this section.

10 (iv) The court shall provide notice to the prosecuting attorney
11 and to the attorney representing the defendant, and shall hold a
12 hearing, no later than 18 days from the date of the certification, to
13 determine whether antipsychotic medication should be ordered
14 beyond the certification period.

15 (v) If, as a result of the hearing, the court determines that
16 antipsychotic medication should be administered beyond the
17 certification period, the court shall issue an order authorizing the
18 administration of that medication.

19 (vi) The court shall render its decision on the petition and issue
20 its order no later than three calendar days after the hearing and, in
21 any event, no later than the expiration of the 21-day certification
22 period.

23 (vii) *If the administrative law judge upholds the certification*
24 *pursuant to clause (ii), the court may, for a period not to exceed*
25 *14 days, extend the certification and continue the hearing pursuant*
26 *to stipulation between the parties or upon a finding of good cause.*
27 *In determining good cause, the court may review the petition filed*
28 *with the court, the administrative law judge's order, and any*
29 *additional testimony needed by the court to determine if it is*
30 *appropriate to continue medication beyond the 21-day certification*
31 *and for a period of up to 14 days.*

32 (viii) *The district attorney, county counsel, or representative of*
33 *any facility where a defendant found incompetent to stand trial is*
34 *committed may petition the court for an order to administer*
35 *involuntary medication pursuant to the criteria set forth in*
36 *subclauses (II) and (III) of clause (i) of subparagraph (B). The*
37 *order is reviewable as provided in paragraph (7).*

38 (3) When the court orders that the defendant be committed to
39 the State Department of State Hospitals or other public or private
40 treatment facility, the court shall provide copies of the following

1 documents prior to the admission of the defendant to the State
2 Department of State Hospitals or other treatment facility where
3 the defendant is to be committed:

4 (A) The commitment order, including a specification of the
5 charges.

6 (B) A computation or statement setting forth the maximum term
7 of commitment in accordance with subdivision (c).

8 (C) A computation or statement setting forth the amount of
9 credit for time served, if any, to be deducted from the maximum
10 term of commitment.

11 (D) State summary criminal history information.

12 (E) Any arrest reports prepared by the police department or
13 other law enforcement agency.

14 (F) Any court-ordered psychiatric examination or evaluation
15 reports.

16 (G) The community program director's placement
17 recommendation report.

18 (H) Records of any finding of mental incompetence pursuant
19 to this chapter arising out of a complaint charging a felony offense
20 specified in Section 290 or any pending Section 1368 proceeding
21 arising out of a charge of a Section 290 offense.

22 (I) Any medical records.

23 (4) When the defendant is committed to a treatment facility
24 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
25 court makes the findings specified in clause (ii) or (iii) of
26 subparagraph (B) of paragraph (1) to assign the defendant to a
27 treatment facility other than a state hospital or other secure
28 treatment facility, the court shall order that notice be given to the
29 appropriate law enforcement agency or agencies having local
30 jurisdiction at the site of the placement facility of any finding of
31 mental incompetence pursuant to this chapter arising out of a
32 charge of a Section 290 offense.

33 (5) When directing that the defendant be confined in a state
34 hospital pursuant to this subdivision, the court shall commit the
35 patient to the State Department of State Hospitals.

36 (6) (A) If the defendant is committed or transferred to the State
37 Department of State Hospitals pursuant to this section, the court
38 may, upon receiving the written recommendation of the medical
39 director of the state hospital and the community program director
40 that the defendant be transferred to a public or private treatment

1 facility approved by the community program director, order the
2 defendant transferred to that facility. If the defendant is committed
3 or transferred to a public or private treatment facility approved by
4 the community program director, the court may, upon receiving
5 the written recommendation of the community program director,
6 transfer the defendant to the State Department of State Hospitals
7 or to another public or private treatment facility approved by the
8 community program director. In the event of dismissal of the
9 criminal charges before the defendant recovers competence, the
10 person shall be subject to the applicable provisions of the
11 Lanterman-Petris-Short Act (Part 1 (commencing with Section
12 5000) of Division 5 of the Welfare and Institutions Code). If either
13 the defendant or the prosecutor chooses to contest either kind of
14 order of transfer, a petition may be filed in the court for a hearing,
15 which shall be held if the court determines that sufficient grounds
16 exist. At the hearing, the prosecuting attorney or the defendant
17 may present evidence bearing on the order of transfer. The court
18 shall use the same standards as are used in conducting probation
19 revocation hearings pursuant to Section 1203.2.

20 Prior to making an order for transfer under this section, the court
21 shall notify the defendant, the attorney of record for the defendant,
22 the prosecuting attorney, and the community program director or
23 a designee.

24 (B) If the defendant is initially committed to the State
25 Department of State Hospitals or secure treatment facility pursuant
26 to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is
27 subsequently transferred to any other facility, copies of the
28 documents specified in paragraph (3) shall be taken with the
29 defendant to each subsequent facility to which the defendant is
30 transferred. The transferring facility shall also notify the appropriate
31 law enforcement agency or agencies having local jurisdiction at
32 the site of the new facility that the defendant is a person subject
33 to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

34 (7) (A) An order by the court authorizing involuntary
35 medication of the defendant shall be valid for no more than one
36 year. The court shall review the order ~~six months after the order~~
37 ~~was made at the time of the review of the initial report and the~~
38 ~~six-month progress reports pursuant to paragraph (1) of~~
39 ~~subdivision (b) to determine if the grounds for the authorization~~
40 remain. In the review, the court shall consider the reports of the

1 treating psychiatrist or psychiatrists and the defendant's patients'
2 rights advocate or attorney. The court may require testimony from
3 the treating psychiatrist or psychiatrists and the patients' rights
4 advocate or attorney, if necessary. The court may continue the
5 order authorizing involuntary medication for up to another six
6 months, or vacate the order, or make any other appropriate order.

7 *(B) Within 60 days before the expiration of the one-year*
8 *involuntary medication order, the district attorney, county counsel,*
9 *or representative of any facility where a defendant found*
10 *incompetent to stand trial is committed may petition the committing*
11 *court for a renewal, subject to the same conditions and*
12 *requirements as in subparagraph (A). The petition shall include*
13 *the basis for involuntary medication set forth in clause (i) of*
14 *subparagraph (B) of paragraph (2). Notice of the petition shall*
15 *be provided to the defendant, the defendant's attorney, and the*
16 *district attorney. The court shall hear and determine whether the*
17 *defendant continues to meet the criteria set forth in clause (i) of*
18 *subparagraph (B) of paragraph (2). The hearing on any petition*
19 *to renew an order for involuntary medication shall be conducted*
20 *prior to the expiration of the current order.*

21 (b) (1) Within 90 days of a commitment made pursuant to
22 subdivision (a), the medical director of the state hospital or other
23 treatment facility to which the defendant is confined shall make a
24 written report to the court and the community program director
25 for the county or region of commitment, or a designee, concerning
26 the defendant's progress toward recovery of mental ~~competence~~.
27 *competence and whether the administration of antipsychotic*
28 *medication remains necessary.* If the defendant is on outpatient
29 status, the outpatient treatment staff shall make a written report to
30 the community program director concerning the defendant's
31 progress toward recovery of mental competence. Within 90 days
32 of placement on outpatient status, the community program director
33 shall report to the court on this matter. If the defendant has not
34 recovered mental competence, but the report discloses a substantial
35 likelihood that the defendant will regain mental competence in the
36 foreseeable future, the defendant shall remain in the state hospital
37 or other treatment facility or on outpatient status. Thereafter, at
38 six-month intervals or until the defendant becomes mentally
39 competent, if the defendant is confined in a treatment facility, the
40 medical director of the hospital or person in charge of the facility

1 shall report in writing to the court and the community program
2 director or a designee regarding the defendant's progress toward
3 recovery of mental ~~competence~~. *competence and whether the*
4 *administration of antipsychotic medication remains necessary.* If
5 the defendant is on outpatient status, after the initial 90-day report,
6 the outpatient treatment staff shall report to the community program
7 director on the defendant's progress toward recovery, and the
8 community program director shall report to the court on this matter
9 at six-month intervals. A copy of these reports shall be provided
10 to the prosecutor and defense counsel by the court. If the report
11 indicates that there is no substantial likelihood that the defendant
12 will regain mental competence in the foreseeable future, the
13 committing court shall order the defendant to be returned to the
14 court for proceedings pursuant to paragraph (2) of subdivision (c).
15 The court shall transmit a copy of its order to the community
16 program director or a designee.

17 (2) If the court has issued an order authorizing the treating
18 facility to involuntarily administer antipsychotic medication to the
19 defendant, the reports made ~~at six-month intervals pursuant to~~
20 *paragraph (1)* concerning the defendant's progress toward
21 regaining competency shall also consider the issue of involuntary
22 medication. Each report shall include, but is not limited to, all the
23 following:

24 (A) Whether or not the defendant has the capacity to make
25 decisions concerning antipsychotic medication.

26 (B) If the defendant lacks capacity to make decisions concerning
27 antipsychotic medication, whether the defendant risks serious harm
28 to his or her physical or mental health if not treated with
29 antipsychotic medication.

30 (C) Whether or not the defendant presents a danger to others if
31 he or she is not treated with antipsychotic medication.

32 (D) Whether the defendant has a mental illness for which
33 medications are the only effective treatment.

34 (E) Whether there are any side effects from the medication
35 currently being experienced by the defendant that would interfere
36 with the defendant's ability to collaborate with counsel.

37 (F) Whether there are any effective alternatives to medication.

38 (G) How quickly the medication is likely to bring the defendant
39 to competency.

1 (H) Whether the treatment plan includes methods other than
2 medication to restore the defendant to competency.

3 (I) A statement, if applicable, that no medication is likely to
4 restore the defendant to competency.

5 (3) After reviewing the reports, the court shall determine whether
6 or not grounds for the order authorizing involuntary administration
7 of antipsychotic medication still exist and shall do one of the
8 following:

9 (A) If the original grounds for involuntary medication still exist,
10 the order authorizing the treating facility to involuntarily administer
11 antipsychotic medication to the defendant shall remain in effect.

12 (B) If the original grounds for involuntary medication no longer
13 exist, and there is no other basis for involuntary administration of
14 antipsychotic medication, the order for the involuntary
15 administration of antipsychotic medication shall be vacated.

16 (C) If the original grounds for involuntary medication no longer
17 exist, and the report states that there is another basis for involuntary
18 administration of antipsychotic medication, the court shall set a
19 hearing within 21 days to determine whether the order for the
20 involuntary administration of antipsychotic medication shall be
21 vacated or whether a new order for the involuntary administration
22 of antipsychotic medication shall be issued. The hearing shall
23 proceed as set forth in subparagraph (B) of paragraph (2) of
24 subdivision (a).

25 (4) Any defendant who has been committed or has been on
26 outpatient status for 18 months and is still hospitalized or on
27 outpatient status shall be returned to the committing court where
28 a hearing shall be held pursuant to the procedures set forth in
29 Section 1369. The court shall transmit a copy of its order to the
30 community program director or a designee.

31 (5) If it is determined by the court that no treatment for the
32 defendant's mental impairment is being conducted, the defendant
33 shall be returned to the committing court. The court shall transmit
34 a copy of its order to the community program director or a
35 designee.

36 (6) At each review by the court specified in this subdivision,
37 the court shall determine if the security level of housing and
38 treatment is appropriate and may make an order in accordance
39 with its determination. If the court determines that the defendant
40 shall continue to be treated in the state hospital or on an outpatient

1 basis, the court shall determine issues concerning administration
2 of antipsychotic medication, as set forth in subparagraph (B) of
3 paragraph (2) of subdivision (a).

4 (c) (1) At the end of three years from the date of commitment
5 or a period of commitment equal to the maximum term of
6 imprisonment provided by law for the most serious offense charged
7 in the information, indictment, or misdemeanor complaint,
8 whichever is shorter, a defendant who has not recovered mental
9 competence shall be returned to the committing court. The court
10 shall notify the community program director or a designee of the
11 return and of any resulting court orders.

12 (2) Whenever any defendant is returned to the court pursuant
13 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this
14 subdivision and it appears to the court that the defendant is gravely
15 disabled, as defined in subparagraph (B) of paragraph (1) of
16 subdivision (h) of Section 5008 of the Welfare and Institutions
17 Code, the court shall order the conservatorship investigator of the
18 county of commitment of the defendant to initiate conservatorship
19 proceedings for the defendant pursuant to Chapter 3 (commencing
20 with Section 5350) of Part 1 of Division 5 of the Welfare and
21 Institutions Code. Any hearings required in the conservatorship
22 proceedings shall be held in the superior court in the county that
23 ordered the commitment. The court shall transmit a copy of the
24 order directing initiation of conservatorship proceedings to the
25 community program director or a designee, the sheriff and the
26 district attorney of the county in which criminal charges are
27 pending, and the defendant's counsel of record. The court shall
28 notify the community program director or a designee, the sheriff
29 and district attorney of the county in which criminal charges are
30 pending, and the defendant's counsel of record of the outcome of
31 the conservatorship proceedings.

32 (3) If a change in placement is proposed for a defendant who
33 is committed pursuant to subparagraph (B) of paragraph (1) of
34 subdivision (h) of Section 5008 of the Welfare and Institutions
35 Code, the court shall provide notice and an opportunity to be heard
36 with respect to the proposed placement of the defendant to the
37 sheriff and the district attorney of the county in which criminal
38 charges are pending.

39 (4) If the defendant is confined in a treatment facility, a copy
40 of any report to the committing court regarding the defendant's

1 progress toward recovery of mental competence shall be provided
2 by the committing court to the prosecutor and to the defense
3 counsel.

4 (d) The criminal action remains subject to dismissal pursuant
5 to Section 1385. If the criminal action is dismissed, the court shall
6 transmit a copy of the order of dismissal to the community program
7 director or a designee.

8 (e) If the criminal charge against the defendant is dismissed,
9 the defendant shall be released from any commitment ordered
10 under this section, but without prejudice to the initiation of any
11 proceedings that may be appropriate under the
12 ~~Lanterman-Petris-Short Act, Part Act (Part 1~~ (commencing with
13 Section 5000) of Division 5 of the Welfare and Institutions ~~Code~~
14 *Code*).

15 (f) As used in this chapter, “community program director” means
16 the person, agency, or entity designated by the State Department
17 of State Hospitals pursuant to Section 1605 of this code and Section
18 4360 of the Welfare and Institutions Code.

19 (g) For the purpose of this section, “secure treatment facility”
20 shall not include, except for state mental hospitals, state
21 developmental centers, and correctional treatment facilities, any
22 facility licensed pursuant to Chapter 2 (commencing with Section
23 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
24 3.2 (commencing with Section 1569) of, Division 2 of the Health
25 and Safety Code, or any community board and care facility.

26 (h) Nothing in this section shall preclude a defendant from filing
27 a petition for habeas corpus to challenge the continuing validity
28 of an order authorizing a treatment facility or outpatient program
29 to involuntarily administer antipsychotic medication to a person
30 being treated as incompetent to stand trial.

31 *SEC. 1.1 Section 1370 of the Penal Code is amended to read:*

32 1370. (a) (1) (A) If the defendant is found mentally
33 competent, the criminal process shall resume, the trial on the
34 offense charged shall proceed, and judgment may be pronounced.

35 (B) If the defendant is found mentally incompetent, the trial or
36 judgment shall be suspended until the person becomes mentally
37 competent.

38 (i) In the meantime, the court shall order that the mentally
39 incompetent defendant be delivered by the sheriff to a state hospital
40 for the care and treatment of the mentally disordered, as directed

1 by the State Department of State Hospitals, or to any other available
2 public or private treatment facility, including a local county jail
3 treatment facility or the community-based residential treatment
4 system established pursuant to Article 1 (commencing with Section
5 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and
6 Institutions Code if the facility has a secured perimeter or a locked
7 and controlled treatment facility, approved by the community
8 program director that will promote the defendant's speedy
9 restoration to mental competence, or placed on outpatient status
10 as specified in Section 1600.

11 (ii) However, if the action against the defendant who has been
12 found mentally incompetent is on a complaint charging a felony
13 offense specified in Section 290, the prosecutor shall determine
14 whether the defendant previously has been found mentally
15 incompetent to stand trial pursuant to this chapter on a charge of
16 a Section 290 offense, or whether the defendant is currently the
17 subject of a pending Section 1368 proceeding arising out of a
18 charge of a Section 290 offense. If either determination is made,
19 the prosecutor shall so notify the court and defendant in writing.
20 After this notification, and opportunity for hearing, the court shall
21 order that the defendant be delivered by the sheriff to a state
22 hospital, as directed by the State Department of State Hospitals,
23 or other secure treatment facility for the care and treatment of the
24 mentally disordered unless the court makes specific findings on
25 the record that an alternative placement would provide more
26 appropriate treatment for the defendant and would not pose a
27 danger to the health and safety of others.

28 (iii) If the action against the defendant who has been found
29 mentally incompetent is on a complaint charging a felony offense
30 specified in Section 290 and the defendant has been denied bail
31 pursuant to subdivision (b) of Section 12 of Article I of the
32 California Constitution because the court has found, based upon
33 clear and convincing evidence, a substantial likelihood that the
34 person's release would result in great bodily harm to others, the
35 court shall order that the defendant be delivered by the sheriff to
36 a state hospital for the care and treatment of the mentally
37 disordered, as directed by the State Department of State Hospitals,
38 unless the court makes specific findings on the record that an
39 alternative placement would provide more appropriate treatment

1 for the defendant and would not pose a danger to the health and
2 safety of others.

3 (iv) The clerk of the court shall notify the Department of Justice
4 in writing of any finding of mental incompetence with respect to
5 a defendant who is subject to clause (ii) or (iii) for inclusion in his
6 or her state summary criminal history information.

7 (C) Upon the filing of a certificate of restoration to competence,
8 the court shall order that the defendant be returned to court in
9 accordance with Section 1372. The court shall transmit a copy of
10 its order to the community program director or a designee.

11 (D) A defendant charged with a violent felony may not be
12 delivered to a state hospital or treatment facility pursuant to this
13 subdivision unless the state hospital or treatment facility has a
14 secured perimeter or a locked and controlled treatment facility,
15 and the judge determines that the public safety will be protected.

16 (E) For purposes of this paragraph, “violent felony” means an
17 offense specified in subdivision (c) of Section 667.5.

18 (F) A defendant charged with a violent felony may be placed
19 on outpatient status, as specified in Section 1600, only if the court
20 finds that the placement will not pose a danger to the health or
21 safety of others. If the court places a defendant charged with a
22 violent felony on outpatient status, as specified in Section 1600,
23 the court ~~must~~ *shall* serve copies of the placement order on defense
24 counsel, the sheriff in the county where the defendant will be
25 ~~placed~~ *placed*, and the district attorney for the county in which the
26 violent felony charges are pending against the defendant.

27 (2) Prior to making the order directing that the defendant be
28 committed to the State Department of State Hospitals or other
29 treatment facility or placed on outpatient status, the court shall
30 proceed as follows:

31 (A) The court shall order the community program director or a
32 designee to evaluate the defendant and to submit to the court within
33 15 judicial days of the order a written recommendation as to
34 whether the defendant should be required to undergo outpatient
35 treatment, or *be* committed to the State Department of State
36 Hospitals or to any other treatment facility. ~~No~~ A person shall *not*
37 be admitted to a state hospital or other treatment facility or placed
38 on outpatient status under this section without having been
39 evaluated by the community program director or a designee. The
40 community program director or designee shall evaluate the

1 appropriate placement for the defendant between the State
2 Department of State Hospitals, a local county jail treatment facility,
3 or the community-based residential treatment system based upon
4 guidelines provided by the State Department of State Hospitals.
5 If a local county jail treatment facility is selected, the State
6 Department of State Hospitals shall provide treatment at the county
7 jail treatment facility and reimburse the county jail treatment
8 facility for the reasonable costs of the bed during the treatment. If
9 the community-based residential treatment system is selected, the
10 State Department of State Hospitals shall provide reimbursement
11 to the community-based residential treatment system for the cost
12 of treatment as negotiated with the State Department of State
13 Hospitals. The six-month limitation in Section 1369.1 shall not
14 apply to individuals deemed incompetent to stand trial who are
15 being treated to restore competency within a county jail treatment
16 facility pursuant to this section.

17 (B) The court shall hear and determine whether the *defendant*
18 *lacks capacity to make decisions regarding the administration of*
19 *antipsychotic medication. The court shall consider opinions in the*
20 *reports prepared pursuant to subdivision (a) of Section 1369, as*
21 *applicable to the issue of whether the defendant lacks capacity to*
22 *make decisions regarding the administration of antipsychotic*
23 *medication, and shall proceed as follows:*

24 (i) The court shall hear and determine whether any of the
25 following is true:

26 (I) The defendant lacks capacity to make decisions regarding
27 antipsychotic medication, the defendant's mental disorder requires
28 medical treatment with antipsychotic medication, and, if the
29 defendant's mental disorder is not treated with antipsychotic
30 medication, it is probable that serious harm to the physical or
31 mental health of the patient will result. Probability of serious harm
32 to the physical or mental health of the defendant requires evidence
33 that the defendant is presently suffering adverse effects to his or
34 her physical or mental health, or the defendant has previously
35 suffered these effects as a result of a mental disorder and his or
36 her condition is substantially deteriorating. The fact that a
37 defendant has a diagnosis of a mental disorder does not alone
38 establish probability of serious harm to the physical or mental
39 health of the defendant.

1 (II) The defendant is a danger to others, in that the defendant
2 has inflicted, attempted to inflict, or made a serious threat of
3 inflicting substantial physical harm on another while in custody,
4 or the defendant had inflicted, attempted to inflict, or made a
5 serious threat of inflicting substantial physical harm on another
6 that resulted in his or her being taken into custody, and the
7 defendant presents, as a result of mental disorder or mental defect,
8 a demonstrated danger of inflicting substantial physical harm on
9 others. Demonstrated danger may be based on an assessment of
10 the defendant's present mental condition, including a consideration
11 of past behavior of the defendant within six years prior to the time
12 the defendant last attempted to inflict, inflicted, or threatened to
13 inflict substantial physical harm on another, and other relevant
14 evidence.

15 (III) The people have charged the defendant with a serious crime
16 against the person or property, involuntary administration of
17 antipsychotic medication is substantially likely to render the
18 defendant competent to stand trial, the medication is unlikely to
19 have side effects that interfere with the defendant's ability to
20 understand the nature of the criminal proceedings or to assist
21 counsel in the conduct of a defense in a reasonable manner, less
22 intrusive treatments are unlikely to have substantially the same
23 results, and antipsychotic medication is in the patient's best medical
24 interest in light of his or her medical condition.

25 (ii) If the court finds any of the conditions described in clause
26 (i) to be true, the court shall issue an order authorizing ~~the treatment~~
27 ~~facility to involuntarily administer~~ *involuntary administration of*
28 antipsychotic medication to the defendant when and as prescribed
29 by the defendant's treating ~~psychiatrist~~ *psychiatrist at any facility*
30 *housing the defendant for purposes of this chapter. The order shall*
31 *be valid for no more than one year, pursuant to subparagraph (A)*
32 *of paragraph (7).* The court shall not order involuntary
33 administration of psychotropic medication under subclause (III)
34 of clause (i) unless the court has first found that the defendant does
35 not meet the criteria for involuntary administration of psychotropic
36 medication under subclause (I) of clause (i) and does not meet the
37 criteria under subclause (II) of clause (i).

38 (iii) In all cases, the treating hospital, facility, or program may
39 administer medically appropriate antipsychotic medication
40 prescribed by a psychiatrist in an emergency as described in

1 subdivision (m) of Section 5008 of the Welfare and Institutions
2 Code.

3 (iv) If the court has determined that the defendant has the
4 capacity to make decisions regarding antipsychotic medication,
5 and if the defendant, with advice of his or her counsel, consents,
6 the court order of commitment shall include confirmation that
7 antipsychotic medication may be given to the defendant as
8 prescribed by a treating psychiatrist pursuant to the defendant's
9 consent. The commitment order shall also indicate that, if the
10 defendant withdraws consent for antipsychotic medication, after
11 the treating psychiatrist complies with the provisions of
12 subparagraph (C), the defendant shall be returned to court for a
13 hearing in accordance with subparagraphs (C) and (D) regarding
14 whether antipsychotic medication shall be administered
15 involuntarily.

16 (v) If the court has determined that the defendant has the
17 capacity to make decisions regarding antipsychotic medication
18 and if the defendant, with advice from his or her counsel, does not
19 consent, the court order for commitment shall indicate that, after
20 the treating psychiatrist complies with the provisions of
21 subparagraph (C), the defendant shall be returned to court for a
22 hearing in accordance with subparagraphs (C) and (D) regarding
23 whether antipsychotic medication shall be administered
24 involuntarily.

25 (vi) Any report made pursuant to paragraph (1) of subdivision
26 (b) shall include a description of any antipsychotic medication
27 administered to the defendant and its effects and side effects,
28 including effects on the defendant's appearance or behavior that
29 would affect the defendant's ability to understand the nature of
30 the criminal proceedings or to assist counsel in the conduct of a
31 defense in a reasonable manner. During the time the defendant is
32 confined in a state hospital or other treatment facility or placed on
33 outpatient status, either the defendant or the people may request
34 that the court review any order made pursuant to this subdivision.
35 The defendant, to the same extent enjoyed by other patients in the
36 state hospital or other treatment facility, shall have the right to
37 contact the patients' rights advocate regarding his or her rights
38 under this section.

39 (C) If the defendant consented to antipsychotic medication as
40 described in clause (iv) of subparagraph (B), but subsequently

1 withdraws his or her consent, or, if involuntary antipsychotic
2 medication was not ordered pursuant to clause (v) of subparagraph
3 (B), and the treating psychiatrist determines that antipsychotic
4 medication has become medically necessary and appropriate, the
5 treating psychiatrist shall make efforts to obtain informed consent
6 from the defendant for antipsychotic medication. If informed
7 consent is not obtained from the defendant, and the treating
8 psychiatrist is of the opinion that the defendant lacks capacity to
9 make decisions regarding antipsychotic medication based on the
10 conditions described in subclause (I) or (II) of clause (i) of
11 subparagraph (B), the treating psychiatrist shall certify whether
12 the lack of capacity and any applicable conditions described above
13 exist. That certification shall contain an assessment of the current
14 mental status of the defendant and the opinion of the treating
15 psychiatrist that involuntary antipsychotic medication has become
16 medically necessary and appropriate.

17 (D) (i) If the treating psychiatrist certifies that antipsychotic
18 medication has become medically necessary and appropriate
19 pursuant to subparagraph (C), antipsychotic medication may be
20 administered to the defendant for not more than 21 days, provided,
21 however, that, within 72 hours of the certification, the defendant
22 is provided a medication review hearing before an administrative
23 law judge to be conducted at the facility where the defendant is
24 receiving treatment. The treating psychiatrist shall present the case
25 for the certification for involuntary treatment and the defendant
26 shall be represented by an attorney or a patients' rights advocate.
27 The attorney or patients' rights advocate shall be appointed to meet
28 with the defendant no later than one day prior to the medication
29 review hearing to review the defendant's rights at the medication
30 review hearing, discuss the process, answer questions or concerns
31 regarding involuntary medication or the hearing, assist the
32 defendant in preparing for the hearing and advocating for his or
33 her interests at the hearing, review the panel's final determination
34 following the hearing, advise the defendant of his or her right to
35 judicial review of the panel's decision, and provide the defendant
36 with referral information for legal advice on the subject. The
37 defendant shall also have the following rights with respect to the
38 medication review hearing:

39 (I) ~~To being~~ *be* given timely access to the defendant's records.

1 (II) To be present at the hearing, unless the defendant waives
2 that right.

3 (III) To present evidence at the hearing.

4 (IV) To question persons presenting evidence supporting
5 involuntary medication.

6 (V) To make reasonable requests for attendance of witnesses
7 on the defendant's behalf.

8 (VI) To a hearing conducted in an impartial and informal
9 manner.

10 (ii) If the administrative law judge determines that the defendant
11 either meets the criteria specified in subclause (I) of clause (i) of
12 subparagraph (B), or meets the criteria specified in subclause (II)
13 of clause (i) of subparagraph (B), then antipsychotic medication
14 may continue to be administered to the defendant for the 21-day
15 certification period. Concurrently with the treating psychiatrist's
16 certification, the treating psychiatrist shall file a copy of the
17 certification and a petition with the court for issuance of an order
18 to administer antipsychotic medication beyond the 21-day
19 certification period. For purposes of this subparagraph, the treating
20 psychiatrist shall not be required to pay or deposit any fee for the
21 filing of the petition or other document or paper related to the
22 petition.

23 (iii) If the administrative law judge disagrees with the
24 certification, medication may not be administered involuntarily
25 until the court determines that antipsychotic medication should be
26 administered pursuant to this section.

27 (iv) The court shall provide notice to the prosecuting attorney
28 and to the attorney representing the defendant, and shall hold a
29 hearing, no later than 18 days from the date of the certification, to
30 determine whether antipsychotic medication should be ordered
31 beyond the certification period.

32 (v) If, as a result of the hearing, the court determines that
33 antipsychotic medication should be administered beyond the
34 certification period, the court shall issue an order authorizing the
35 administration of that medication.

36 (vi) The court shall render its decision on the petition and issue
37 its order no later than three calendar days after the hearing and, in
38 any event, no later than the expiration of the 21-day certification
39 period.

1 (vii) *If the administrative law judge upholds the certification*
2 *pursuant to clause (ii), the court may, for a period not to exceed*
3 *14 days, extend the certification and continue the hearing pursuant*
4 *to stipulation between the parties or upon a finding of good cause.*
5 *In determining good cause, the court may review the petition filed*
6 *with the court, the administrative law judge's order, and any*
7 *additional testimony needed by the court to determine if it is*
8 *appropriate to continue medication beyond the 21-day certification*
9 *and for a period of up to 14 days.*

10 (viii) *The district attorney, county counsel, or representative of*
11 *any facility where a defendant found incompetent to stand trial is*
12 *committed may petition the court for an order to administer*
13 *involuntary medication pursuant to the criteria set forth in*
14 *subclauses (II) and (III) of clause (i) of subparagraph (B). The*
15 *order is reviewable as provided in paragraph (7).*

16 (3) When the court orders that the defendant be committed to
17 the State Department of State Hospitals or other public or private
18 treatment facility, the court shall provide copies of the following
19 documents prior to the admission of the defendant to the State
20 Department of State Hospitals or other treatment facility where
21 the defendant is to be committed:

22 (A) The commitment order, including a specification of the
23 charges.

24 (B) A computation or statement setting forth the maximum term
25 of commitment in accordance with subdivision (c).

26 (C) A computation or statement setting forth the amount of
27 credit for time served, if any, to be deducted from the maximum
28 term of commitment.

29 (D) State summary criminal history information.

30 (E) Any arrest reports prepared by the police department or
31 other law enforcement agency.

32 (F) Any court-ordered psychiatric examination or evaluation
33 reports.

34 (G) The community program director's placement
35 recommendation report.

36 (H) Records of any finding of mental incompetence pursuant
37 to this chapter arising out of a complaint charging a felony offense
38 specified in Section 290 or any pending Section 1368 proceeding
39 arising out of a charge of a Section 290 offense.

40 (I) Any medical records.

1 (4) When the defendant is committed to a treatment facility
2 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
3 court makes the findings specified in clause (ii) or (iii) of
4 subparagraph (B) of paragraph (1) to assign the defendant to a
5 treatment facility other than a state hospital or other secure
6 treatment facility, the court shall order that notice be given to the
7 appropriate law enforcement agency or agencies having local
8 jurisdiction at the site of the placement facility of any finding of
9 mental incompetence pursuant to this chapter arising out of a
10 charge of a Section 290 offense.

11 (5) When directing that the defendant be confined in a state
12 hospital pursuant to this subdivision, the court shall commit the
13 patient to the State Department of State Hospitals.

14 (6) (A) If the defendant is committed or transferred to the State
15 Department of State Hospitals pursuant to this section, the court
16 may, upon receiving the written recommendation of the medical
17 director of the state hospital and the community program director
18 that the defendant be transferred to a public or private treatment
19 facility approved by the community program director, order the
20 defendant transferred to that facility. If the defendant is committed
21 or transferred to a public or private treatment facility approved by
22 the community program director, the court may, upon receiving
23 the written recommendation of the community program director,
24 transfer the defendant to the State Department of State Hospitals
25 or to another public or private treatment facility approved by the
26 community program director. In the event of dismissal of the
27 criminal charges before the defendant recovers competence, the
28 person shall be subject to the applicable provisions of the
29 Lanterman-Petris-Short Act (Part 1 (commencing with Section
30 5000) of Division 5 of the Welfare and Institutions Code). If either
31 the defendant or the prosecutor chooses to contest either kind of
32 order of transfer, a petition may be filed in the court for a hearing,
33 which shall be held if the court determines that sufficient grounds
34 exist. At the hearing, the prosecuting attorney or the defendant
35 may present evidence bearing on the order of transfer. The court
36 shall use the same standards as are used in conducting probation
37 revocation hearings pursuant to Section 1203.2.

38 Prior to making an order for transfer under this section, the court
39 shall notify the defendant, the attorney of record for the defendant,

1 the prosecuting attorney, and the community program director or
2 a designee.

3 (B) If the defendant is initially committed to the State
4 Department of State Hospitals or secure treatment facility pursuant
5 to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is
6 subsequently transferred to any other facility, copies of the
7 documents specified in paragraph (3) shall be taken with the
8 defendant to each subsequent facility to which the defendant is
9 transferred. The transferring facility shall also notify the appropriate
10 law enforcement agency or agencies having local jurisdiction at
11 the site of the new facility that the defendant is a person subject
12 to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

13 (7) (A) An order by the court authorizing involuntary
14 medication of the defendant shall be valid for no more than one
15 year. The court shall review the order ~~six months after the order~~
16 ~~was made at the time of the review of the initial report and the~~
17 ~~six-month progress reports pursuant to paragraph (1) of~~
18 ~~subdivision (b) to determine if the grounds for the authorization~~
19 remain. In the review, the court shall consider the reports of the
20 treating psychiatrist or psychiatrists and the defendant's patients'
21 rights advocate or attorney. The court may require testimony from
22 the treating psychiatrist or psychiatrists and the patients' rights
23 advocate or attorney, if necessary. The court may continue the
24 order authorizing involuntary medication for up to another six
25 months, or vacate the order, or make any other appropriate order.

26 (B) *Within 60 days before the expiration of the one-year*
27 *involuntary medication order, the district attorney, county counsel,*
28 *or representative of any facility where a defendant found*
29 *incompetent to stand trial is committed may petition the committing*
30 *court for a renewal, subject to the same conditions and*
31 *requirements as in subparagraph (A). The petition shall include*
32 *the basis for involuntary medication set forth in clause (i) of*
33 *subparagraph (B) of paragraph (2). Notice of the petition shall*
34 *be provided to the defendant, the defendant's attorney, and the*
35 *district attorney. The court shall hear and determine whether the*
36 *defendant continues to meet the criteria set forth in clause (i) of*
37 *subparagraph (B) of paragraph (2). The hearing on any petition*
38 *to renew an order for involuntary medication shall be conducted*
39 *prior to the expiration of the current order.*

(b) (1) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the state hospital or other treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental ~~competence~~. *competence and whether the administration of antipsychotic medication remains necessary*. If the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the community program director concerning the defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the community program director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the state hospital or other treatment facility or on outpatient status. Thereafter, at six-month intervals or until the defendant becomes mentally competent, if the defendant is confined in a treatment facility, the medical director of the hospital or person in charge of the facility shall report in writing to the court and the community program director or a designee regarding the defendant's progress toward recovery of mental ~~competence~~. *competence and whether the administration of antipsychotic medication remains necessary*. If the defendant is on outpatient status, after the initial 90-day report, the outpatient treatment staff shall report to the community program director on the defendant's progress toward recovery, and the community program director shall report to the court on this matter at six-month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court. ~~If~~

(A) If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision ~~(e)~~. *(c) no later than 10 days following the receipt of the report*. The court shall transmit a copy of its order to the community program director or a designee.

(B) If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the medical director of the state hospital or other treatment

1 *facility to which the defendant is confined shall do both of the*
2 *following:*

3 *(i) Promptly notify and provide a copy of the report to the*
4 *defense counsel and the district attorney.*

5 *(ii) Provide a separate notification, in compliance with*
6 *applicable privacy laws, to the committing county's sheriff that*
7 *transportation will be needed for the patient.*

8 (2) If the court has issued an order authorizing the treating
9 facility to involuntarily administer antipsychotic medication to the
10 defendant, the reports made ~~at six-month intervals~~ *pursuant to*
11 *paragraph (1)* concerning the defendant's progress toward
12 regaining competency shall also consider the issue of involuntary
13 medication. Each report shall include, but is not limited to, all the
14 following:

15 (A) Whether or not the defendant has the capacity to make
16 decisions concerning antipsychotic medication.

17 (B) If the defendant lacks capacity to make decisions concerning
18 antipsychotic medication, whether the defendant risks serious harm
19 to his or her physical or mental health if not treated with
20 antipsychotic medication.

21 (C) Whether or not the defendant presents a danger to others if
22 he or she is not treated with antipsychotic medication.

23 (D) Whether the defendant has a mental illness for which
24 medications are the only effective treatment.

25 (E) Whether there are any side effects from the medication
26 currently being experienced by the defendant that would interfere
27 with the defendant's ability to collaborate with counsel.

28 (F) Whether there are any effective alternatives to medication.

29 (G) How quickly the medication is likely to bring the defendant
30 to competency.

31 (H) Whether the treatment plan includes methods other than
32 medication to restore the defendant to competency.

33 (I) A statement, if applicable, that no medication is likely to
34 restore the defendant to competency.

35 (3) After reviewing the reports, the court shall determine whether
36 or not grounds for the order authorizing involuntary administration
37 of antipsychotic medication still exist and shall do one of the
38 following:

1 (A) If the original grounds for involuntary medication still exist,
2 the order authorizing the treating facility to involuntarily administer
3 antipsychotic medication to the defendant shall remain in effect.

4 (B) If the original grounds for involuntary medication no longer
5 exist, and there is no other basis for involuntary administration of
6 antipsychotic medication, the order for the involuntary
7 administration of antipsychotic medication shall be vacated.

8 (C) If the original grounds for involuntary medication no longer
9 exist, and the report states that there is another basis for involuntary
10 administration of antipsychotic medication, the court shall set a
11 hearing within 21 days to determine whether the order for the
12 involuntary administration of antipsychotic medication shall be
13 vacated or whether a new order for the involuntary administration
14 of antipsychotic medication shall be issued. The hearing shall
15 proceed as set forth in subparagraph (B) of paragraph (2) of
16 subdivision (a).

17 (4) Any defendant who has been committed or has been on
18 outpatient status for 18 months and is still hospitalized or on
19 outpatient status shall be returned to the committing court where
20 a hearing shall be held pursuant to the procedures set forth in
21 Section 1369. The court shall transmit a copy of its order to the
22 community program director or a designee.

23 (5) If it is determined by the court that no treatment for the
24 defendant's mental impairment is being conducted, the defendant
25 shall be returned to the committing court. The court shall transmit
26 a copy of its order to the community program director or a
27 designee.

28 (6) At each review by the court specified in this subdivision,
29 the court shall determine if the security level of housing and
30 treatment is appropriate and may make an order in accordance
31 with its determination. If the court determines that the defendant
32 shall continue to be treated in the state hospital or on an outpatient
33 basis, the court shall determine issues concerning administration
34 of antipsychotic medication, as set forth in subparagraph (B) of
35 paragraph (2) of subdivision (a).

36 (c) (1) At the end of three years from the date of commitment
37 or a period of commitment equal to the maximum term of
38 imprisonment provided by law for the most serious offense charged
39 in the information, indictment, or misdemeanor complaint,
40 whichever is shorter, *but no later than 90 days prior to the*

1 *expiration of the defendant's term of commitment*, a defendant
2 who has not recovered mental competence shall be returned to the
3 committing court. The court shall notify the community program
4 director or a designee of the return and of any resulting court
5 orders.

6 (2) Whenever any defendant is returned to the court pursuant
7 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this
8 subdivision and it appears to the court that the defendant is gravely
9 disabled, as defined in subparagraph (B) of paragraph (1) of
10 subdivision (h) of Section 5008 of the Welfare and Institutions
11 Code, the court shall order the conservatorship investigator of the
12 county of commitment of the defendant to initiate conservatorship
13 proceedings for the defendant pursuant to Chapter 3 (commencing
14 with Section 5350) of Part 1 of Division 5 of the Welfare and
15 Institutions Code. Any hearings required in the conservatorship
16 proceedings shall be held in the superior court in the county that
17 ordered the commitment. The court shall transmit a copy of the
18 order directing initiation of conservatorship proceedings to the
19 community program director or a designee, the sheriff and the
20 district attorney of the county in which criminal charges are
21 pending, and the defendant's counsel of record. The court shall
22 notify the community program director or a designee, the sheriff
23 and district attorney of the county in which criminal charges are
24 pending, and the defendant's counsel of record of the outcome of
25 the conservatorship proceedings.

26 (3) If a change in placement is proposed for a defendant who
27 is committed pursuant to subparagraph (B) of paragraph (1) of
28 subdivision (h) of Section 5008 of the Welfare and Institutions
29 Code, the court shall provide notice and an opportunity to be heard
30 with respect to the proposed placement of the defendant to the
31 sheriff and the district attorney of the county in which criminal
32 charges are pending.

33 (4) If the defendant is confined in a treatment facility, a copy
34 of any report to the committing court regarding the defendant's
35 progress toward recovery of mental competence shall be provided
36 by the committing court to the prosecutor and to the defense
37 counsel.

38 (d) The criminal action remains subject to dismissal pursuant
39 to Section 1385. If the criminal action is dismissed, the court shall

1 transmit a copy of the order of dismissal to the community program
2 director or a designee.

3 (e) If the criminal charge against the defendant is dismissed,
4 the defendant shall be released from any commitment ordered
5 under this section, but without prejudice to the initiation of any
6 proceedings that may be appropriate under the
7 ~~Lanterman-Petris-Short Act, Part Act (Part 1~~ (commencing with
8 Section 5000) of Division 5 of the Welfare and Institutions ~~Code.~~
9 *Code*).

10 (f) As used in this chapter, “community program director” means
11 the person, agency, or entity designated by the State Department
12 of State Hospitals pursuant to Section 1605 of this code and Section
13 4360 of the Welfare and Institutions Code.

14 (g) For the purpose of this section, “secure treatment facility”
15 shall not include, except for state mental hospitals, state
16 developmental centers, and correctional treatment facilities, any
17 facility licensed pursuant to Chapter 2 (commencing with Section
18 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
19 3.2 (commencing with Section 1569) of, Division 2 of the Health
20 and Safety Code, or any community board and care facility.

21 (h) Nothing in this section shall preclude a defendant from filing
22 a petition for habeas corpus to challenge the continuing validity
23 of an order authorizing a treatment facility or outpatient program
24 to involuntarily administer antipsychotic medication to a person
25 being treated as incompetent to stand trial.

26 *SEC. 1.2. Section 1370 of the Penal Code is amended to read:*

27 1370. (a) (1) (A) If the defendant is found mentally
28 competent, the criminal process shall resume, the trial on the
29 offense charged *or hearing on the alleged violation* shall proceed,
30 and judgment may be pronounced.

31 (B) If the defendant is found mentally incompetent, ~~the trial or~~
32 *trial, the hearing on the alleged violation, or the judgment* shall
33 be suspended until the person becomes mentally competent.

34 (i) In the meantime, the court shall order that the mentally
35 incompetent defendant be delivered by the sheriff to a state hospital
36 for the care and treatment of the mentally disordered, as directed
37 by the State Department of State Hospitals, or to any other available
38 public or private treatment facility, including a local county jail
39 treatment facility or the community-based residential treatment
40 system established pursuant to Article 1 (commencing with Section

1 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and
2 Institutions Code if the facility has a secured perimeter or a locked
3 and controlled treatment facility, approved by the community
4 program director that will promote the defendant's speedy
5 restoration to mental competence, or placed on outpatient status
6 as specified in Section 1600.

7 (ii) However, if the action against the defendant who has been
8 found mentally incompetent is on a complaint charging a felony
9 offense specified in Section 290, the prosecutor shall determine
10 whether the defendant previously has been found mentally
11 incompetent to stand trial pursuant to this chapter on a charge of
12 a Section 290 offense, or whether the defendant is currently the
13 subject of a pending Section 1368 proceeding arising out of a
14 charge of a Section 290 offense. If either determination is made,
15 the prosecutor shall so notify the court and defendant in writing.
16 After this notification, and opportunity for hearing, the court shall
17 order that the defendant be delivered by the sheriff to a state
18 hospital, as directed by the State Department of State Hospitals,
19 or other secure treatment facility for the care and treatment of the
20 mentally disordered unless the court makes specific findings on
21 the record that an alternative placement would provide more
22 appropriate treatment for the defendant and would not pose a
23 danger to the health and safety of others.

24 (iii) If the action against the defendant who has been found
25 mentally incompetent is on a complaint charging a felony offense
26 specified in Section 290 and the defendant has been denied bail
27 pursuant to subdivision (b) of Section 12 of Article I of the
28 California Constitution because the court has found, based upon
29 clear and convincing evidence, a substantial likelihood that the
30 person's release would result in great bodily harm to others, the
31 court shall order that the defendant be delivered by the sheriff to
32 a state hospital for the care and treatment of the mentally
33 disordered, as directed by the State Department of State Hospitals,
34 unless the court makes specific findings on the record that an
35 alternative placement would provide more appropriate treatment
36 for the defendant and would not pose a danger to the health and
37 safety of others.

38 (iv) The clerk of the court shall notify the Department of Justice
39 in writing of any finding of mental incompetence with respect to

1 a defendant who is subject to clause (ii) or (iii) for inclusion in his
2 or her state summary criminal history information.

3 (C) Upon the filing of a certificate of restoration to competence,
4 the court shall order that the defendant be returned to court in
5 accordance with Section 1372. The court shall transmit a copy of
6 its order to the community program director or a designee.

7 (D) A defendant charged with a violent felony may not be
8 delivered to a state hospital or treatment facility pursuant to this
9 subdivision unless the state hospital or treatment facility has a
10 secured perimeter or a locked and controlled treatment facility,
11 and the judge determines that the public safety will be protected.

12 (E) For purposes of this paragraph, “violent felony” means an
13 offense specified in subdivision (c) of Section 667.5.

14 (F) A defendant charged with a violent felony may be placed
15 on outpatient status, as specified in Section 1600, only if the court
16 finds that the placement will not pose a danger to the health or
17 safety of others. If the court places a defendant charged with a
18 violent felony on outpatient status, as specified in Section 1600,
19 the court ~~must~~ *shall* serve copies of the placement order on defense
20 counsel, the sheriff in the county where the defendant will be
21 ~~placed~~ *placed*, and the district attorney for the county in which the
22 violent felony charges are pending against the defendant.

23 (2) Prior to making the order directing that the defendant be
24 committed to the State Department of State Hospitals or other
25 treatment facility or placed on outpatient status, the court shall
26 proceed as follows:

27 (A) The court shall order the community program director or a
28 designee to evaluate the defendant and to submit to the court within
29 15 judicial days of the order a written recommendation as to
30 whether the defendant should be required to undergo outpatient
31 treatment, or *be* committed to the State Department of State
32 Hospitals or to any other treatment facility. ~~No~~ A person shall *not*
33 be admitted to a state hospital or other treatment facility or placed
34 on outpatient status under this section without having been
35 evaluated by the community program director or a designee. The
36 community program director or designee shall evaluate the
37 appropriate placement for the defendant between the State
38 Department of State Hospitals, a local county jail treatment facility,
39 or the community-based residential treatment system based upon
40 guidelines provided by the State Department of State Hospitals.

1 If a local county jail treatment facility is selected, the State
2 Department of State Hospitals shall provide treatment at the county
3 jail treatment facility and reimburse the county jail treatment
4 facility for the reasonable costs of the bed during the treatment. If
5 the community-based residential treatment system is selected, the
6 State Department of State Hospitals shall provide reimbursement
7 to the community-based residential treatment system for the cost
8 of treatment as negotiated with the State Department of State
9 Hospitals. The six-month limitation in Section 1369.1 shall not
10 apply to individuals deemed incompetent to stand trial who are
11 being treated to restore competency within a county jail treatment
12 facility pursuant to this section.

13 (B) The court shall hear and determine whether the *defendant*
14 *lacks capacity to make decisions regarding the administration of*
15 *antipsychotic medication. The court shall consider opinions in the*
16 *reports prepared pursuant to subdivision (a) of Section 1369, as*
17 *applicable to the issue of whether the defendant lacks capacity to*
18 *make decisions regarding the administration of antipsychotic*
19 *medication, and shall proceed as follows:*

20 (i) The court shall hear and determine whether any of the
21 following is true:

22 (I) The defendant lacks capacity to make decisions regarding
23 antipsychotic medication, the defendant's mental disorder requires
24 medical treatment with antipsychotic medication, and, if the
25 defendant's mental disorder is not treated with antipsychotic
26 medication, it is probable that serious harm to the physical or
27 mental health of the patient will result. Probability of serious harm
28 to the physical or mental health of the defendant requires evidence
29 that the defendant is presently suffering adverse effects to his or
30 her physical or mental health, or the defendant has previously
31 suffered these effects as a result of a mental disorder and his or
32 her condition is substantially deteriorating. The fact that a
33 defendant has a diagnosis of a mental disorder does not alone
34 establish probability of serious harm to the physical or mental
35 health of the defendant.

36 (II) The defendant is a danger to others, in that the defendant
37 has inflicted, attempted to inflict, or made a serious threat of
38 inflicting substantial physical harm on another while in custody,
39 or the defendant had inflicted, attempted to inflict, or made a
40 serious threat of inflicting substantial physical harm on another

1 that resulted in his or her being taken into custody, and the
2 defendant presents, as a result of mental disorder or mental defect,
3 a demonstrated danger of inflicting substantial physical harm on
4 others. Demonstrated danger may be based on an assessment of
5 the defendant's present mental condition, including a consideration
6 of past behavior of the defendant within six years prior to the time
7 the defendant last attempted to inflict, inflicted, or threatened to
8 inflict substantial physical harm on another, and other relevant
9 evidence.

10 (III) The people have charged the defendant with a serious crime
11 against the person or property, involuntary administration of
12 antipsychotic medication is substantially likely to render the
13 defendant competent to stand trial, the medication is unlikely to
14 have side effects that interfere with the defendant's ability to
15 understand the nature of the criminal proceedings or to assist
16 counsel in the conduct of a defense in a reasonable manner, less
17 intrusive treatments are unlikely to have substantially the same
18 results, and antipsychotic medication is in the patient's best medical
19 interest in light of his or her medical condition.

20 (ii) If the court finds any of the conditions described in clause
21 (i) to be true, the court shall issue an order authorizing ~~the treatment~~
22 ~~facility to involuntarily administer~~ *involuntary administration of*
23 antipsychotic medication to the defendant when and as prescribed
24 by the defendant's treating ~~psychiatrist~~ *psychiatrist at any facility*
25 *housing the defendant for purposes of this chapter. The order shall*
26 *be valid for no more than one year, pursuant to subparagraph (A)*
27 *of paragraph (7).* The court shall not order involuntary
28 administration of psychotropic medication under subclause (III)
29 of clause (i) unless the court has first found that the defendant does
30 not meet the criteria for involuntary administration of psychotropic
31 medication under subclause (I) of clause (i) and does not meet the
32 criteria under subclause (II) of clause (i).

33 (iii) In all cases, the treating hospital, facility, or program may
34 administer medically appropriate antipsychotic medication
35 prescribed by a psychiatrist in an emergency as described in
36 subdivision (m) of Section 5008 of the Welfare and Institutions
37 Code.

38 (iv) If the court has determined that the defendant has the
39 capacity to make decisions regarding antipsychotic medication,
40 and if the defendant, with advice of his or her counsel, consents,

1 the court order of commitment shall include confirmation that
2 antipsychotic medication may be given to the defendant as
3 prescribed by a treating psychiatrist pursuant to the defendant's
4 consent. The commitment order shall also indicate that, if the
5 defendant withdraws consent for antipsychotic medication, after
6 the treating psychiatrist complies with the provisions of
7 subparagraph (C), the defendant shall be returned to court for a
8 hearing in accordance with subparagraphs (C) and (D) regarding
9 whether antipsychotic medication shall be administered
10 involuntarily.

11 (v) If the court has determined that the defendant has the
12 capacity to make decisions regarding antipsychotic medication
13 and if the defendant, with advice from his or her counsel, does not
14 consent, the court order for commitment shall indicate that, after
15 the treating psychiatrist complies with the provisions of
16 subparagraph (C), the defendant shall be returned to court for a
17 hearing in accordance with subparagraphs (C) and (D) regarding
18 whether antipsychotic medication shall be administered
19 involuntarily.

20 (vi) Any report made pursuant to paragraph (1) of subdivision
21 (b) shall include a description of any antipsychotic medication
22 administered to the defendant and its effects and side effects,
23 including effects on the defendant's appearance or behavior that
24 would affect the defendant's ability to understand the nature of
25 the criminal proceedings or to assist counsel in the conduct of a
26 defense in a reasonable manner. During the time the defendant is
27 confined in a state hospital or other treatment facility or placed on
28 outpatient status, either the defendant or the people may request
29 that the court review any order made pursuant to this subdivision.
30 The defendant, to the same extent enjoyed by other patients in the
31 state hospital or other treatment facility, shall have the right to
32 contact the patients' rights advocate regarding his or her rights
33 under this section.

34 (C) If the defendant consented to antipsychotic medication as
35 described in clause (iv) of subparagraph (B), but subsequently
36 withdraws his or her consent, or, if involuntary antipsychotic
37 medication was not ordered pursuant to clause (v) of subparagraph
38 (B), and the treating psychiatrist determines that antipsychotic
39 medication has become medically necessary and appropriate, the
40 treating psychiatrist shall make efforts to obtain informed consent

1 from the defendant for antipsychotic medication. If informed
2 consent is not obtained from the defendant, and the treating
3 psychiatrist is of the opinion that the defendant lacks capacity to
4 make decisions regarding antipsychotic medication based on the
5 conditions described in subclause (I) or (II) of clause (i) of
6 subparagraph (B), the treating psychiatrist shall certify whether
7 the lack of capacity and any applicable conditions described above
8 exist. That certification shall contain an assessment of the current
9 mental status of the defendant and the opinion of the treating
10 psychiatrist that involuntary antipsychotic medication has become
11 medically necessary and appropriate.

12 (D) (i) If the treating psychiatrist certifies that antipsychotic
13 medication has become medically necessary and appropriate
14 pursuant to subparagraph (C), antipsychotic medication may be
15 administered to the defendant for not more than 21 days, provided,
16 however, that, within 72 hours of the certification, the defendant
17 is provided a medication review hearing before an administrative
18 law judge to be conducted at the facility where the defendant is
19 receiving treatment. The treating psychiatrist shall present the case
20 for the certification for involuntary treatment and the defendant
21 shall be represented by an attorney or a patients' rights advocate.
22 The attorney or patients' rights advocate shall be appointed to meet
23 with the defendant no later than one day prior to the medication
24 review hearing to review the defendant's rights at the medication
25 review hearing, discuss the process, answer questions or concerns
26 regarding involuntary medication or the hearing, assist the
27 defendant in preparing for the hearing and advocating for his or
28 her interests at the hearing, review the panel's final determination
29 following the hearing, advise the defendant of his or her right to
30 judicial review of the panel's decision, and provide the defendant
31 with referral information for legal advice on the subject. The
32 defendant shall also have the following rights with respect to the
33 medication review hearing:

34 (I) ~~To being~~ *be* given timely access to the defendant's records.

35 (II) To be present at the hearing, unless the defendant waives
36 that right.

37 (III) To present evidence at the hearing.

38 (IV) To question persons presenting evidence supporting
39 involuntary medication.

1 (V) To make reasonable requests for attendance of witnesses
2 on the defendant's behalf.

3 (VI) To a hearing conducted in an impartial and informal
4 manner.

5 (ii) If the administrative law judge determines that the defendant
6 either meets the criteria specified in subclause (I) of clause (i) of
7 subparagraph (B), or meets the criteria specified in subclause (II)
8 of clause (i) of subparagraph (B), then antipsychotic medication
9 may continue to be administered to the defendant for the 21-day
10 certification period. Concurrently with the treating psychiatrist's
11 certification, the treating psychiatrist shall file a copy of the
12 certification and a petition with the court for issuance of an order
13 to administer antipsychotic medication beyond the 21-day
14 certification period. For purposes of this subparagraph, the treating
15 psychiatrist shall not be required to pay or deposit any fee for the
16 filing of the petition or other document or paper related to the
17 petition.

18 (iii) If the administrative law judge disagrees with the
19 certification, medication may not be administered involuntarily
20 until the court determines that antipsychotic medication should be
21 administered pursuant to this section.

22 (iv) The court shall provide notice to the prosecuting attorney
23 and to the attorney representing the defendant, and shall hold a
24 hearing, no later than 18 days from the date of the certification, to
25 determine whether antipsychotic medication should be ordered
26 beyond the certification period.

27 (v) If, as a result of the hearing, the court determines that
28 antipsychotic medication should be administered beyond the
29 certification period, the court shall issue an order authorizing the
30 administration of that medication.

31 (vi) The court shall render its decision on the petition and issue
32 its order no later than three calendar days after the hearing and, in
33 any event, no later than the expiration of the 21-day certification
34 period.

35 (vii) *If the administrative law judge upholds the certification*
36 *pursuant to clause (ii), the court may, for a period not to exceed*
37 *14 days, extend the certification and continue the hearing pursuant*
38 *to stipulation between the parties or upon a finding of good cause.*
39 *In determining good cause, the court may review the petition filed*
40 *with the court, the administrative law judge's order, and any*

1 *additional testimony needed by the court to determine if it is*
2 *appropriate to continue medication beyond the 21-day certification*
3 *and for a period of up to 14 days.*

4 *(viii) The district attorney, county counsel, or representative of*
5 *any facility where a defendant found incompetent to stand trial is*
6 *committed may petition the court for an order to administer*
7 *involuntary medication pursuant to the criteria set forth in*
8 *subclauses (II) and (III) of clause (i) of subparagraph (B). The*
9 *order is reviewable as provided in paragraph (7).*

10 (3) When the court orders that the defendant be committed to
11 the State Department of State Hospitals or other public or private
12 treatment facility, the court shall provide copies of the following
13 documents prior to the admission of the defendant to the State
14 Department of State Hospitals or other treatment facility where
15 the defendant is to be committed:

16 (A) The commitment order, including a specification of the
17 charges.

18 (B) A computation or statement setting forth the maximum term
19 of commitment in accordance with subdivision (c).

20 (C) A computation or statement setting forth the amount of
21 credit for time served, if any, to be deducted from the maximum
22 term of commitment.

23 (D) State summary criminal history information.

24 (E) Any arrest reports prepared by the police department or
25 other law enforcement agency.

26 (F) Any court-ordered psychiatric examination or evaluation
27 reports.

28 (G) The community program director's placement
29 recommendation report.

30 (H) Records of any finding of mental incompetence pursuant
31 to this chapter arising out of a complaint charging a felony offense
32 specified in Section 290 or any pending Section 1368 proceeding
33 arising out of a charge of a Section 290 offense.

34 (I) Any medical records.

35 (4) When the defendant is committed to a treatment facility
36 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
37 court makes the findings specified in clause (ii) or (iii) of
38 subparagraph (B) of paragraph (1) to assign the defendant to a
39 treatment facility other than a state hospital or other secure
40 treatment facility, the court shall order that notice be given to the

1 appropriate law enforcement agency or agencies having local
2 jurisdiction at the site of the placement facility of any finding of
3 mental incompetence pursuant to this chapter arising out of a
4 charge of a Section 290 offense.

5 (5) When directing that the defendant be confined in a state
6 hospital pursuant to this subdivision, the court shall commit the
7 patient to the State Department of State Hospitals.

8 (6) (A) If the defendant is committed or transferred to the State
9 Department of State Hospitals pursuant to this section, the court
10 may, upon receiving the written recommendation of the medical
11 director of the state hospital and the community program director
12 that the defendant be transferred to a public or private treatment
13 facility approved by the community program director, order the
14 defendant transferred to that facility. If the defendant is committed
15 or transferred to a public or private treatment facility approved by
16 the community program director, the court may, upon receiving
17 the written recommendation of the community program director,
18 transfer the defendant to the State Department of State Hospitals
19 or to another public or private treatment facility approved by the
20 community program director. In the event of dismissal of the
21 criminal charges before the defendant recovers competence, the
22 person shall be subject to the applicable provisions of the
23 Lanterman-Petris-Short Act (Part 1 (commencing with Section
24 5000) of Division 5 of the Welfare and Institutions Code). If either
25 the defendant or the prosecutor chooses to contest either kind of
26 order of transfer, a petition may be filed in the court for a hearing,
27 which shall be held if the court determines that sufficient grounds
28 exist. At the hearing, the prosecuting attorney or the defendant
29 may present evidence bearing on the order of transfer. The court
30 shall use the same standards as are used in conducting probation
31 revocation hearings pursuant to Section 1203.2.

32 Prior to making an order for transfer under this section, the court
33 shall notify the defendant, the attorney of record for the defendant,
34 the prosecuting attorney, and the community program director or
35 a designee.

36 (B) If the defendant is initially committed to the State
37 Department of State Hospitals or secure treatment facility pursuant
38 to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is
39 subsequently transferred to any other facility, copies of the
40 documents specified in paragraph (3) shall be taken with the

1 defendant to each subsequent facility to which the defendant is
2 transferred. The transferring facility shall also notify the appropriate
3 law enforcement agency or agencies having local jurisdiction at
4 the site of the new facility that the defendant is a person subject
5 to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

6 (7) (A) An order by the court authorizing involuntary
7 medication of the defendant shall be valid for no more than one
8 year. The court shall review the order six months after the order
9 was made to determine if the grounds for the authorization remain.

10 In the review, the court shall consider the reports of the treating
11 psychiatrist or psychiatrists and the defendant's patients' rights
12 advocate or attorney. The court may require testimony from the
13 treating psychiatrist or psychiatrists and the patients' rights
14 advocate or attorney, if necessary. The court may continue the
15 order authorizing involuntary medication for up to another six
16 months, or vacate the order, or make any other appropriate order.

17 (B) *Within 60 days before the expiration of the one-year*
18 *involuntary medication order, the district attorney, county counsel,*
19 *or representative of any facility where a defendant found*
20 *incompetent to stand trial is committed may petition the committing*
21 *court for a renewal, subject to the same conditions and*
22 *requirements as in subparagraph (A). The petition shall include*
23 *the basis for involuntary medication set forth in clause (i) of*
24 *subparagraph (B) of paragraph (2). Notice of the petition shall*
25 *be provided to the defendant, the defendant's attorney, and the*
26 *district attorney. The court shall hear and determine whether the*
27 *defendant continues to meet the criteria set forth in clause (i) of*
28 *subparagraph (B) of paragraph (2). The hearing on any petition*
29 *to renew an order for involuntary medication shall be conducted*
30 *prior to the expiration of the current order.*

31 (b) (1) Within 90 days of a commitment made pursuant to
32 subdivision (a), the medical director of the state hospital or other
33 treatment facility to which the defendant is confined shall make a
34 written report to the court and the community program director
35 for the county or region of commitment, or a designee, concerning
36 the defendant's progress toward recovery of mental ~~competence~~.
37 *competence and whether the administration of antipsychotic*
38 *medication remains necessary.* If the defendant is on outpatient
39 status, the outpatient treatment staff shall make a written report to
40 the community program director concerning the defendant's

1 progress toward recovery of mental competence. Within 90 days
2 of placement on outpatient status, the community program director
3 shall report to the court on this matter. If the defendant has not
4 recovered mental competence, but the report discloses a substantial
5 likelihood that the defendant will regain mental competence in the
6 foreseeable future, the defendant shall remain in the state hospital
7 or other treatment facility or on outpatient status. Thereafter, at
8 six-month intervals or until the defendant becomes mentally
9 competent, if the defendant is confined in a treatment facility, the
10 medical director of the hospital or person in charge of the facility
11 shall report in writing to the court and the community program
12 director or a designee regarding the defendant's progress toward
13 recovery of mental ~~competence~~; *competence and whether the*
14 *administration of antipsychotic medication remains necessary*. If
15 the defendant is on outpatient status, after the initial 90-day report,
16 the outpatient treatment staff shall report to the community program
17 director on the defendant's progress toward recovery, and the
18 community program director shall report to the court on this matter
19 at six-month intervals. A copy of these reports shall be provided
20 to the prosecutor and defense counsel by the court. If the report
21 indicates that there is no substantial likelihood that the defendant
22 will regain mental competence in the foreseeable future, the
23 committing court shall order the defendant to be returned to the
24 court for proceedings pursuant to paragraph (2) of subdivision (c).
25 The court shall transmit a copy of its order to the community
26 program director or a designee.

27 (2) If the court has issued an order authorizing the treating
28 facility to involuntarily administer antipsychotic medication to the
29 defendant, the reports made ~~at six-month intervals pursuant to~~
30 *paragraph (1)* concerning the defendant's progress toward
31 regaining competency shall also consider the issue of involuntary
32 medication. Each report shall include, but is not limited to, all the
33 following:

34 (A) Whether or not the defendant has the capacity to make
35 decisions concerning antipsychotic medication.

36 (B) If the defendant lacks capacity to make decisions concerning
37 antipsychotic medication, whether the defendant risks serious harm
38 to his or her physical or mental health if not treated with
39 antipsychotic medication.

1 (C) Whether or not the defendant presents a danger to others if
2 he or she is not treated with antipsychotic medication.

3 (D) Whether the defendant has a mental illness for which
4 medications are the only effective treatment.

5 (E) Whether there are any side effects from the medication
6 currently being experienced by the defendant that would interfere
7 with the defendant's ability to collaborate with counsel.

8 (F) Whether there are any effective alternatives to medication.

9 (G) How quickly the medication is likely to bring the defendant
10 to competency.

11 (H) Whether the treatment plan includes methods other than
12 medication to restore the defendant to competency.

13 (I) A statement, if applicable, that no medication is likely to
14 restore the defendant to competency.

15 (3) After reviewing the reports, the court shall determine whether
16 or not grounds for the order authorizing involuntary administration
17 of antipsychotic medication still exist and shall do one of the
18 following:

19 (A) If the original grounds for involuntary medication still exist,
20 the order authorizing the treating facility to involuntarily administer
21 antipsychotic medication to the defendant shall remain in effect.

22 (B) If the original grounds for involuntary medication no longer
23 exist, and there is no other basis for involuntary administration of
24 antipsychotic medication, the order for the involuntary
25 administration of antipsychotic medication shall be vacated.

26 (C) If the original grounds for involuntary medication no longer
27 exist, and the report states that there is another basis for involuntary
28 administration of antipsychotic medication, the court shall set a
29 hearing within 21 days to determine whether the order for the
30 involuntary administration of antipsychotic medication shall be
31 vacated or whether a new order for the involuntary administration
32 of antipsychotic medication shall be issued. The hearing shall
33 proceed as set forth in subparagraph (B) of paragraph (2) of
34 subdivision (a).

35 (4) Any defendant who has been committed or has been on
36 outpatient status for 18 months and is still hospitalized or on
37 outpatient status shall be returned to the committing court where
38 a hearing shall be held pursuant to the procedures set forth in
39 Section 1369. The court shall transmit a copy of its order to the
40 community program director or a designee.

1 (5) If it is determined by the court that no treatment for the
2 defendant's mental impairment is being conducted, the defendant
3 shall be returned to the committing court. The court shall transmit
4 a copy of its order to the community program director or a
5 designee.

6 (6) At each review by the court specified in this subdivision,
7 the court shall determine if the security level of housing and
8 treatment is appropriate and may make an order in accordance
9 with its determination. If the court determines that the defendant
10 shall continue to be treated in the state hospital or on an outpatient
11 basis, the court shall determine issues concerning administration
12 of antipsychotic medication, as set forth in subparagraph (B) of
13 paragraph (2) of subdivision (a).

14 (c) (1) At the end of three years from the date of commitment
15 or a period of commitment equal to the maximum term of
16 imprisonment provided by law for the most serious offense charged
17 in the information, indictment, or misdemeanor complaint, *or the*
18 *maximum term of imprisonment provided by law for a violation*
19 *of probation or mandatory supervision*, whichever is shorter, a
20 defendant who has not recovered mental competence shall be
21 returned to the committing court. The court shall notify the
22 community program director or a designee of the return and of
23 any resulting court orders.

24 (2) Whenever any defendant is returned to the court pursuant
25 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this
26 subdivision and it appears to the court that the defendant is gravely
27 disabled, as defined in subparagraph (B) of paragraph (1) of
28 subdivision (h) of Section 5008 of the Welfare and Institutions
29 Code, the court shall order the conservatorship investigator of the
30 county of commitment of the defendant to initiate conservatorship
31 proceedings for the defendant pursuant to Chapter 3 (commencing
32 with Section 5350) of Part 1 of Division 5 of the Welfare and
33 Institutions Code. Any hearings required in the conservatorship
34 proceedings shall be held in the superior court in the county that
35 ordered the commitment. The court shall transmit a copy of the
36 order directing initiation of conservatorship proceedings to the
37 community program director or a designee, the sheriff and the
38 district attorney of the county in which criminal charges are
39 pending, and the defendant's counsel of record. The court shall
40 notify the community program director or a designee, the sheriff

1 and district attorney of the county in which criminal charges are
2 pending, and the defendant's counsel of record of the outcome of
3 the conservatorship proceedings.

4 (3) If a change in placement is proposed for a defendant who
5 is committed pursuant to subparagraph (B) of paragraph (1) of
6 subdivision (h) of Section 5008 of the Welfare and Institutions
7 Code, the court shall provide notice and an opportunity to be heard
8 with respect to the proposed placement of the defendant to the
9 sheriff and the district attorney of the county in which *the* criminal
10 charges *or revocation proceedings* are pending.

11 (4) If the defendant is confined in a treatment facility, a copy
12 of any report to the committing court regarding the defendant's
13 progress toward recovery of mental competence shall be provided
14 by the committing court to the prosecutor and to the defense
15 counsel.

16 (d) ~~The~~ *With the exception of proceedings alleging a violation*
17 *of mandatory supervision, the* criminal action remains subject to
18 dismissal pursuant to Section 1385. If the criminal action is
19 dismissed, the court shall transmit a copy of the order of dismissal
20 to the community program director or a designee. *In a proceeding*
21 *alleging a violation of mandatory supervision, if the person is not*
22 *placed under a conservatorship as described in paragraph (2) of*
23 *subdivision (c), or if a conservatorship is terminated, the court*
24 *shall reinstate mandatory supervision and may modify the terms*
25 *and conditions of supervision to include appropriate mental health*
26 *treatment or refer the matter to a local mental health court, reentry*
27 *court, or other collaborative justice court available for improving*
28 *the mental health of the defendant.*

29 (e) If the criminal-~~charge~~ *action* against the defendant is
30 dismissed, the defendant shall be released from any commitment
31 ordered under this section, but without prejudice to the initiation
32 of any proceedings that may be appropriate under the
33 Lanterman-Petris-Short Act, ~~Part Act~~ *(Part 1* (commencing with
34 Section 5000) of Division 5 of the Welfare and Institutions ~~Code~~.
35 *Code*).

36 (f) As used in this chapter, "community program director" means
37 the person, agency, or entity designated by the State Department
38 of State Hospitals pursuant to Section 1605 of this code and Section
39 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, “secure treatment facility” shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

(h) Nothing in this section shall preclude a defendant from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing a treatment facility or outpatient program to involuntarily administer antipsychotic medication to a person being treated as incompetent to stand trial.

SEC. 1.3. Section 1370 of the Penal Code is amended to read:

1370. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged *or hearing on the alleged violation* shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent, ~~the trial or trial, the hearing on the alleged violation, or the~~ judgment shall be suspended until the person becomes mentally competent.

(i) In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, as directed by the State Department of State Hospitals, or to any other available public or private treatment facility, including a local county jail treatment facility or the community-based residential treatment system established pursuant to Article 1 (commencing with Section 5670) of Chapter 2.5 of Part 2 of Division 5 of the Welfare and Institutions Code if the facility has a secured perimeter or a locked and controlled treatment facility, approved by the community program director that will promote the defendant’s speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a

1 charge of a Section 290 offense. If either determination is made,
2 the prosecutor shall so notify the court and defendant in writing.
3 After this notification, and opportunity for hearing, the court shall
4 order that the defendant be delivered by the sheriff to a state
5 hospital, as directed by the State Department of State Hospitals,
6 or other secure treatment facility for the care and treatment of the
7 mentally disordered unless the court makes specific findings on
8 the record that an alternative placement would provide more
9 appropriate treatment for the defendant and would not pose a
10 danger to the health and safety of others.

11 (iii) If the action against the defendant who has been found
12 mentally incompetent is on a complaint charging a felony offense
13 specified in Section 290 and the defendant has been denied bail
14 pursuant to subdivision (b) of Section 12 of Article I of the
15 California Constitution because the court has found, based upon
16 clear and convincing evidence, a substantial likelihood that the
17 person's release would result in great bodily harm to others, the
18 court shall order that the defendant be delivered by the sheriff to
19 a state hospital for the care and treatment of the mentally
20 disordered, as directed by the State Department of State Hospitals,
21 unless the court makes specific findings on the record that an
22 alternative placement would provide more appropriate treatment
23 for the defendant and would not pose a danger to the health and
24 safety of others.

25 (iv) The clerk of the court shall notify the Department of Justice
26 in writing of any finding of mental incompetence with respect to
27 a defendant who is subject to clause (ii) or (iii) for inclusion in his
28 or her state summary criminal history information.

29 (C) Upon the filing of a certificate of restoration to competence,
30 the court shall order that the defendant be returned to court in
31 accordance with Section 1372. The court shall transmit a copy of
32 its order to the community program director or a designee.

33 (D) A defendant charged with a violent felony may not be
34 delivered to a state hospital or treatment facility pursuant to this
35 subdivision unless the state hospital or treatment facility has a
36 secured perimeter or a locked and controlled treatment facility,
37 and the judge determines that the public safety will be protected.

38 (E) For purposes of this paragraph, "violent felony" means an
39 offense specified in subdivision (c) of Section 667.5.

1 (F) A defendant charged with a violent felony may be placed
2 on outpatient status, as specified in Section 1600, only if the court
3 finds that the placement will not pose a danger to the health or
4 safety of others. If the court places a defendant charged with a
5 violent felony on outpatient status, as specified in Section 1600,
6 the court ~~must~~ *shall* serve copies of the placement order on defense
7 counsel, the sheriff in the county where the defendant will be
8 ~~placed~~ *placed*, and the district attorney for the county in which the
9 violent felony charges are pending against the defendant.

10 (2) Prior to making the order directing that the defendant be
11 committed to the State Department of State Hospitals or other
12 treatment facility or placed on outpatient status, the court shall
13 proceed as follows:

14 (A) The court shall order the community program director or a
15 designee to evaluate the defendant and to submit to the court within
16 15 judicial days of the order a written recommendation as to
17 whether the defendant should be required to undergo outpatient
18 treatment, or *be* committed to the State Department of State
19 Hospitals or to any other treatment facility. ~~No~~ *A* person shall *not*
20 be admitted to a state hospital or other treatment facility or placed
21 on outpatient status under this section without having been
22 evaluated by the community program director or a designee. The
23 community program director or designee shall evaluate the
24 appropriate placement for the defendant between the State
25 Department of State Hospitals, a local county jail treatment facility,
26 or the community-based residential treatment system based upon
27 guidelines provided by the State Department of State Hospitals.
28 If a local county jail treatment facility is selected, the State
29 Department of State Hospitals shall provide treatment at the county
30 jail treatment facility and reimburse the county jail treatment
31 facility for the reasonable costs of the bed during the treatment. If
32 the community-based residential treatment system is selected, the
33 State Department of State Hospitals shall provide reimbursement
34 to the community-based residential treatment system for the cost
35 of treatment as negotiated with the State Department of State
36 Hospitals. The six-month limitation in Section 1369.1 shall not
37 apply to individuals deemed incompetent to stand trial who are
38 being treated to restore competency within a county jail treatment
39 facility pursuant to this section.

1 (B) The court shall hear and determine whether the *defendant*
2 *lacks capacity to make decisions regarding the administration of*
3 *antipsychotic medication. The court shall consider opinions in the*
4 *reports prepared pursuant to subdivision (a) of Section 1369, as*
5 *applicable to the issue of whether the defendant lacks capacity to*
6 *make decisions regarding the administration of antipsychotic*
7 *medication, and shall proceed as follows:*

8 (i) The court shall hear and determine whether any of the
9 following is true:

10 (I) The defendant lacks capacity to make decisions regarding
11 antipsychotic medication, the defendant's mental disorder requires
12 medical treatment with antipsychotic medication, and, if the
13 defendant's mental disorder is not treated with antipsychotic
14 medication, it is probable that serious harm to the physical or
15 mental health of the patient will result. Probability of serious harm
16 to the physical or mental health of the defendant requires evidence
17 that the defendant is presently suffering adverse effects to his or
18 her physical or mental health, or the defendant has previously
19 suffered these effects as a result of a mental disorder and his or
20 her condition is substantially deteriorating. The fact that a
21 defendant has a diagnosis of a mental disorder does not alone
22 establish probability of serious harm to the physical or mental
23 health of the defendant.

24 (II) The defendant is a danger to others, in that the defendant
25 has inflicted, attempted to inflict, or made a serious threat of
26 inflicting substantial physical harm on another while in custody,
27 or the defendant had inflicted, attempted to inflict, or made a
28 serious threat of inflicting substantial physical harm on another
29 that resulted in his or her being taken into custody, and the
30 defendant presents, as a result of mental disorder or mental defect,
31 a demonstrated danger of inflicting substantial physical harm on
32 others. Demonstrated danger may be based on an assessment of
33 the defendant's present mental condition, including a consideration
34 of past behavior of the defendant within six years prior to the time
35 the defendant last attempted to inflict, inflicted, or threatened to
36 inflict substantial physical harm on another, and other relevant
37 evidence.

38 (III) The people have charged the defendant with a serious crime
39 against the person or property, involuntary administration of
40 antipsychotic medication is substantially likely to render the

defendant competent to stand trial, the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner, less intrusive treatments are unlikely to have substantially the same results, and antipsychotic medication is in the patient's best medical interest in light of his or her medical condition.

(ii) If the court finds any of the conditions described in clause (i) to be true, the court shall issue an order authorizing ~~the treatment facility to involuntarily administer~~ *involuntary administration of* antipsychotic medication to the defendant when and as prescribed by the defendant's treating ~~psychiatrist~~ *psychiatrist at any facility housing the defendant for purposes of this chapter. The order shall be valid for no more than one year, pursuant to subparagraph (A) of paragraph (7).* The court shall not order involuntary administration of psychotropic medication under subclause (III) of clause (i) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic medication under subclause (I) of clause (i) and does not meet the criteria under subclause (II) of clause (i).

(iii) In all cases, the treating hospital, facility, or program may administer medically appropriate antipsychotic medication prescribed by a psychiatrist in an emergency as described in subdivision (m) of Section 5008 of the Welfare and Institutions Code.

(iv) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication, and if the defendant, with advice of his or her counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with subparagraphs (C) and (D) regarding whether antipsychotic medication shall be administered involuntarily.

(v) If the court has determined that the defendant has the capacity to make decisions regarding antipsychotic medication

1 and if the defendant, with advice from his or her counsel, does not
2 consent, the court order for commitment shall indicate that, after
3 the treating psychiatrist complies with the provisions of
4 subparagraph (C), the defendant shall be returned to court for a
5 hearing in accordance with subparagraphs (C) and (D) regarding
6 whether antipsychotic medication shall be administered
7 involuntarily.

8 (vi) Any report made pursuant to paragraph (1) of subdivision
9 (b) shall include a description of any antipsychotic medication
10 administered to the defendant and its effects and side effects,
11 including effects on the defendant's appearance or behavior that
12 would affect the defendant's ability to understand the nature of
13 the criminal proceedings or to assist counsel in the conduct of a
14 defense in a reasonable manner. During the time the defendant is
15 confined in a state hospital or other treatment facility or placed on
16 outpatient status, either the defendant or the people may request
17 that the court review any order made pursuant to this subdivision.
18 The defendant, to the same extent enjoyed by other patients in the
19 state hospital or other treatment facility, shall have the right to
20 contact the patients' rights advocate regarding his or her rights
21 under this section.

22 (C) If the defendant consented to antipsychotic medication as
23 described in clause (iv) of subparagraph (B), but subsequently
24 withdraws his or her consent, or, if involuntary antipsychotic
25 medication was not ordered pursuant to clause (v) of subparagraph
26 (B), and the treating psychiatrist determines that antipsychotic
27 medication has become medically necessary and appropriate, the
28 treating psychiatrist shall make efforts to obtain informed consent
29 from the defendant for antipsychotic medication. If informed
30 consent is not obtained from the defendant, and the treating
31 psychiatrist is of the opinion that the defendant lacks capacity to
32 make decisions regarding antipsychotic medication based on the
33 conditions described in subclause (I) or (II) of clause (i) of
34 subparagraph (B), the treating psychiatrist shall certify whether
35 the lack of capacity and any applicable conditions described above
36 exist. That certification shall contain an assessment of the current
37 mental status of the defendant and the opinion of the treating
38 psychiatrist that involuntary antipsychotic medication has become
39 medically necessary and appropriate.

(D) (i) If the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate pursuant to subparagraph (C), antipsychotic medication may be administered to the defendant for not more than 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment. The treating psychiatrist shall present the case for the certification for involuntary treatment and the defendant shall be represented by an attorney or a patients' rights advocate. The attorney or patients' rights advocate shall be appointed to meet with the defendant no later than one day prior to the medication review hearing to review the defendant's rights at the medication review hearing, discuss the process, answer questions or concerns regarding involuntary medication or the hearing, assist the defendant in preparing for the hearing and advocating for his or her interests at the hearing, review the panel's final determination following the hearing, advise the defendant of his or her right to judicial review of the panel's decision, and provide the defendant with referral information for legal advice on the subject. The defendant shall also have the following rights with respect to the medication review hearing:

(I) To ~~being~~ *be* given timely access to the defendant's records.

(II) To be present at the hearing, unless the defendant waives that right.

(III) To present evidence at the hearing.

(IV) To question persons presenting evidence supporting involuntary medication.

(V) To make reasonable requests for attendance of witnesses on the defendant's behalf.

(VI) To a hearing conducted in an impartial and informal manner.

(ii) If the administrative law judge determines that the defendant either meets the criteria specified in subclause (I) of clause (i) of subparagraph (B), or meets the criteria specified in subclause (II) of clause (i) of subparagraph (B), then antipsychotic medication may continue to be administered to the defendant for the 21-day certification period. Concurrently with the treating psychiatrist's certification, the treating psychiatrist shall file a copy of the certification and a petition with the court for issuance of an order

1 to administer antipsychotic medication beyond the 21-day
2 certification period. For purposes of this subparagraph, the treating
3 psychiatrist shall not be required to pay or deposit any fee for the
4 filing of the petition or other document or paper related to the
5 petition.

6 (iii) If the administrative law judge disagrees with the
7 certification, medication may not be administered involuntarily
8 until the court determines that antipsychotic medication should be
9 administered pursuant to this section.

10 (iv) The court shall provide notice to the prosecuting attorney
11 and to the attorney representing the defendant, and shall hold a
12 hearing, no later than 18 days from the date of the certification, to
13 determine whether antipsychotic medication should be ordered
14 beyond the certification period.

15 (v) If, as a result of the hearing, the court determines that
16 antipsychotic medication should be administered beyond the
17 certification period, the court shall issue an order authorizing the
18 administration of that medication.

19 (vi) The court shall render its decision on the petition and issue
20 its order no later than three calendar days after the hearing and, in
21 any event, no later than the expiration of the 21-day certification
22 period.

23 (vii) *If the administrative law judge upholds the certification*
24 *pursuant to clause (ii), the court may, for a period not to exceed*
25 *14 days, extend the certification and continue the hearing pursuant*
26 *to stipulation between the parties or upon a finding of good cause.*
27 *In determining good cause, the court may review the petition filed*
28 *with the court, the administrative law judge's order, and any*
29 *additional testimony needed by the court to determine if it is*
30 *appropriate to continue medication beyond the 21-day certification*
31 *and for a period of up to 14 days.*

32 (viii) *The district attorney, county counsel, or representative of*
33 *any facility where a defendant found incompetent to stand trial is*
34 *committed may petition the court for an order to administer*
35 *involuntary medication pursuant to the criteria set forth in*
36 *subclauses (II) and (III) of clause (i) of subparagraph (B). The*
37 *order is reviewable as provided in paragraph (7).*

38 (3) When the court orders that the defendant be committed to
39 the State Department of State Hospitals or other public or private
40 treatment facility, the court shall provide copies of the following

1 documents prior to the admission of the defendant to the State
2 Department of State Hospitals or other treatment facility where
3 the defendant is to be committed:

4 (A) The commitment order, including a specification of the
5 charges.

6 (B) A computation or statement setting forth the maximum term
7 of commitment in accordance with subdivision (c).

8 (C) A computation or statement setting forth the amount of
9 credit for time served, if any, to be deducted from the maximum
10 term of commitment.

11 (D) State summary criminal history information.

12 (E) Any arrest reports prepared by the police department or
13 other law enforcement agency.

14 (F) Any court-ordered psychiatric examination or evaluation
15 reports.

16 (G) The community program director's placement
17 recommendation report.

18 (H) Records of any finding of mental incompetence pursuant
19 to this chapter arising out of a complaint charging a felony offense
20 specified in Section 290 or any pending Section 1368 proceeding
21 arising out of a charge of a Section 290 offense.

22 (I) Any medical records.

23 (4) When the defendant is committed to a treatment facility
24 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
25 court makes the findings specified in clause (ii) or (iii) of
26 subparagraph (B) of paragraph (1) to assign the defendant to a
27 treatment facility other than a state hospital or other secure
28 treatment facility, the court shall order that notice be given to the
29 appropriate law enforcement agency or agencies having local
30 jurisdiction at the site of the placement facility of any finding of
31 mental incompetence pursuant to this chapter arising out of a
32 charge of a Section 290 offense.

33 (5) When directing that the defendant be confined in a state
34 hospital pursuant to this subdivision, the court shall commit the
35 patient to the State Department of State Hospitals.

36 (6) (A) If the defendant is committed or transferred to the State
37 Department of State Hospitals pursuant to this section, the court
38 may, upon receiving the written recommendation of the medical
39 director of the state hospital and the community program director
40 that the defendant be transferred to a public or private treatment

1 facility approved by the community program director, order the
2 defendant transferred to that facility. If the defendant is committed
3 or transferred to a public or private treatment facility approved by
4 the community program director, the court may, upon receiving
5 the written recommendation of the community program director,
6 transfer the defendant to the State Department of State Hospitals
7 or to another public or private treatment facility approved by the
8 community program director. In the event of dismissal of the
9 criminal charges before the defendant recovers competence, the
10 person shall be subject to the applicable provisions of the
11 Lanterman-Petris-Short Act (Part 1 (commencing with Section
12 5000) of Division 5 of the Welfare and Institutions Code). If either
13 the defendant or the prosecutor chooses to contest either kind of
14 order of transfer, a petition may be filed in the court for a hearing,
15 which shall be held if the court determines that sufficient grounds
16 exist. At the hearing, the prosecuting attorney or the defendant
17 may present evidence bearing on the order of transfer. The court
18 shall use the same standards as are used in conducting probation
19 revocation hearings pursuant to Section 1203.2.

20 Prior to making an order for transfer under this section, the court
21 shall notify the defendant, the attorney of record for the defendant,
22 the prosecuting attorney, and the community program director or
23 a designee.

24 (B) If the defendant is initially committed to the State
25 Department of State Hospitals or secure treatment facility pursuant
26 to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is
27 subsequently transferred to any other facility, copies of the
28 documents specified in paragraph (3) shall be taken with the
29 defendant to each subsequent facility to which the defendant is
30 transferred. The transferring facility shall also notify the appropriate
31 law enforcement agency or agencies having local jurisdiction at
32 the site of the new facility that the defendant is a person subject
33 to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

34 (7) (A) An order by the court authorizing involuntary
35 medication of the defendant shall be valid for no more than one
36 year. The court shall review the order ~~six months after the order~~
37 ~~was made at the time of the review of the initial report and the~~
38 ~~six-month progress reports pursuant to paragraph (1) of~~
39 ~~subdivision (b) to determine if the grounds for the authorization~~
40 remain. In the review, the court shall consider the reports of the

1 treating psychiatrist or psychiatrists and the defendant's patients'
2 rights advocate or attorney. The court may require testimony from
3 the treating psychiatrist or psychiatrists and the patients' rights
4 advocate or attorney, if necessary. The court may continue the
5 order authorizing involuntary medication for up to another six
6 months, or vacate the order, or make any other appropriate order.

7 *(B) Within 60 days before the expiration of the one-year*
8 *involuntary medication order, the district attorney, county counsel,*
9 *or representative of any facility where a defendant found*
10 *incompetent to stand trial is committed may petition the committing*
11 *court for a renewal, subject to the same conditions and*
12 *requirements as in subparagraph (A). The petition shall include*
13 *the basis for involuntary medication set forth in clause (i) of*
14 *subparagraph (B) of paragraph (2). Notice of the petition shall*
15 *be provided to the defendant, the defendant's attorney, and the*
16 *district attorney. The court shall hear and determine whether the*
17 *defendant continues to meet the criteria set forth in clause (i) of*
18 *subparagraph (B) of paragraph (2). The hearing on any petition*
19 *to renew an order for involuntary medication shall be conducted*
20 *prior to the expiration of the current order.*

21 (b) (1) Within 90 days of a commitment made pursuant to
22 subdivision (a), the medical director of the state hospital or other
23 treatment facility to which the defendant is confined shall make a
24 written report to the court and the community program director
25 for the county or region of commitment, or a designee, concerning
26 the defendant's progress toward recovery of mental ~~competence~~.
27 *competence and whether the administration of antipsychotic*
28 *medication remains necessary.* If the defendant is on outpatient
29 status, the outpatient treatment staff shall make a written report to
30 the community program director concerning the defendant's
31 progress toward recovery of mental competence. Within 90 days
32 of placement on outpatient status, the community program director
33 shall report to the court on this matter. If the defendant has not
34 recovered mental competence, but the report discloses a substantial
35 likelihood that the defendant will regain mental competence in the
36 foreseeable future, the defendant shall remain in the state hospital
37 or other treatment facility or on outpatient status. Thereafter, at
38 six-month intervals or until the defendant becomes mentally
39 competent, if the defendant is confined in a treatment facility, the
40 medical director of the hospital or person in charge of the facility

1 shall report in writing to the court and the community program
2 director or a designee regarding the defendant's progress toward
3 recovery of mental ~~competence~~. *competence and whether the*
4 *administration of antipsychotic medication remains necessary.* If
5 the defendant is on outpatient status, after the initial 90-day report,
6 the outpatient treatment staff shall report to the community program
7 director on the defendant's progress toward recovery, and the
8 community program director shall report to the court on this matter
9 at six-month intervals. A copy of these reports shall be provided
10 to the prosecutor and defense counsel by the court. ~~If~~

11 (A) *If the report indicates that there is no substantial likelihood*
12 *that the defendant will regain mental competence in the foreseeable*
13 *future, the committing court shall order the defendant to be returned*
14 *to the court for proceedings pursuant to paragraph (2) of*
15 *subdivision (e). (c) no later than 10 days following receipt of the*
16 *report.* The court shall transmit a copy of its order to the
17 community program director or a designee.

18 (B) *If the report indicates that there is no substantial likelihood*
19 *that the defendant will regain mental competence in the foreseeable*
20 *future, the medical director of the state hospital or other treatment*
21 *facility to which the defendant is confined shall do both of the*
22 *following:*

23 (i) *Promptly notify and provide a copy of the report to the*
24 *defense counsel and the district attorney.*

25 (ii) *Provide a separate notification, in compliance with*
26 *applicable privacy laws, to the committing county's sheriff that*
27 *transportation will be needed for the patient.*

28 (2) If the court has issued an order authorizing the treating
29 facility to involuntarily administer antipsychotic medication to the
30 defendant, the reports made ~~at six-month intervals pursuant to~~
31 *paragraph (1)* concerning the defendant's progress toward
32 regaining competency shall also consider the issue of involuntary
33 medication. Each report shall include, but is not limited to, all the
34 following:

35 (A) Whether or not the defendant has the capacity to make
36 decisions concerning antipsychotic medication.

37 (B) If the defendant lacks capacity to make decisions concerning
38 antipsychotic medication, whether the defendant risks serious harm
39 to his or her physical or mental health if not treated with
40 antipsychotic medication.

1 (C) Whether or not the defendant presents a danger to others if
2 he or she is not treated with antipsychotic medication.

3 (D) Whether the defendant has a mental illness for which
4 medications are the only effective treatment.

5 (E) Whether there are any side effects from the medication
6 currently being experienced by the defendant that would interfere
7 with the defendant's ability to collaborate with counsel.

8 (F) Whether there are any effective alternatives to medication.

9 (G) How quickly the medication is likely to bring the defendant
10 to competency.

11 (H) Whether the treatment plan includes methods other than
12 medication to restore the defendant to competency.

13 (I) A statement, if applicable, that no medication is likely to
14 restore the defendant to competency.

15 (3) After reviewing the reports, the court shall determine whether
16 or not grounds for the order authorizing involuntary administration
17 of antipsychotic medication still exist and shall do one of the
18 following:

19 (A) If the original grounds for involuntary medication still exist,
20 the order authorizing the treating facility to involuntarily administer
21 antipsychotic medication to the defendant shall remain in effect.

22 (B) If the original grounds for involuntary medication no longer
23 exist, and there is no other basis for involuntary administration of
24 antipsychotic medication, the order for the involuntary
25 administration of antipsychotic medication shall be vacated.

26 (C) If the original grounds for involuntary medication no longer
27 exist, and the report states that there is another basis for involuntary
28 administration of antipsychotic medication, the court shall set a
29 hearing within 21 days to determine whether the order for the
30 involuntary administration of antipsychotic medication shall be
31 vacated or whether a new order for the involuntary administration
32 of antipsychotic medication shall be issued. The hearing shall
33 proceed as set forth in subparagraph (B) of paragraph (2) of
34 subdivision (a).

35 (4) Any defendant who has been committed or has been on
36 outpatient status for 18 months and is still hospitalized or on
37 outpatient status shall be returned to the committing court where
38 a hearing shall be held pursuant to the procedures set forth in
39 Section 1369. The court shall transmit a copy of its order to the
40 community program director or a designee.

1 (5) If it is determined by the court that no treatment for the
2 defendant's mental impairment is being conducted, the defendant
3 shall be returned to the committing court. The court shall transmit
4 a copy of its order to the community program director or a
5 designee.

6 (6) At each review by the court specified in this subdivision,
7 the court shall determine if the security level of housing and
8 treatment is appropriate and may make an order in accordance
9 with its determination. If the court determines that the defendant
10 shall continue to be treated in the state hospital or on an outpatient
11 basis, the court shall determine issues concerning administration
12 of antipsychotic medication, as set forth in subparagraph (B) of
13 paragraph (2) of subdivision (a).

14 (c) (1) At the end of three years from the date of commitment
15 or a period of commitment equal to the maximum term of
16 imprisonment provided by law for the most serious offense charged
17 in the information, indictment, or misdemeanor complaint, *or the*
18 *maximum term of imprisonment provided by law for a violation*
19 *of probation or mandatory supervision*, whichever is shorter, *but*
20 *no later than 90 days prior to the expiration of the defendant's*
21 *term of commitment*, a defendant who has not recovered mental
22 competence shall be returned to the committing court. The court
23 shall notify the community program director or a designee of the
24 return and of any resulting court orders.

25 (2) Whenever any defendant is returned to the court pursuant
26 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this
27 subdivision and it appears to the court that the defendant is gravely
28 disabled, as defined in subparagraph (B) of paragraph (1) of
29 subdivision (h) of Section 5008 of the Welfare and Institutions
30 Code, the court shall order the conservatorship investigator of the
31 county of commitment of the defendant to initiate conservatorship
32 proceedings for the defendant pursuant to Chapter 3 (commencing
33 with Section 5350) of Part 1 of Division 5 of the Welfare and
34 Institutions Code. Any hearings required in the conservatorship
35 proceedings shall be held in the superior court in the county that
36 ordered the commitment. The court shall transmit a copy of the
37 order directing initiation of conservatorship proceedings to the
38 community program director or a designee, the sheriff and the
39 district attorney of the county in which criminal charges are
40 pending, and the defendant's counsel of record. The court shall

1 notify the community program director or a designee, the sheriff
2 and district attorney of the county in which criminal charges are
3 pending, and the defendant's counsel of record of the outcome of
4 the conservatorship proceedings.

5 (3) If a change in placement is proposed for a defendant who
6 is committed pursuant to subparagraph (B) of paragraph (1) of
7 subdivision (h) of Section 5008 of the Welfare and Institutions
8 Code, the court shall provide notice and an opportunity to be heard
9 with respect to the proposed placement of the defendant to the
10 sheriff and the district attorney of the county in which *the* criminal
11 charges *or revocation proceedings* are pending.

12 (4) If the defendant is confined in a treatment facility, a copy
13 of any report to the committing court regarding the defendant's
14 progress toward recovery of mental competence shall be provided
15 by the committing court to the prosecutor and to the defense
16 counsel.

17 (d) ~~The~~ *With the exception of proceedings alleging a violation*
18 *of mandatory supervision, the* criminal action remains subject to
19 dismissal pursuant to Section 1385. If the criminal action is
20 dismissed, the court shall transmit a copy of the order of dismissal
21 to the community program director or a designee. *In a proceeding*
22 *alleging a violation of mandatory supervision, if the person is not*
23 *placed under a conservatorship as described in paragraph (2) of*
24 *subdivision (c), or if a conservatorship is terminated, the court*
25 *shall reinstate mandatory supervision and may modify the terms*
26 *and conditions of supervision to include appropriate mental health*
27 *treatment or refer the matter to a local mental health court, reentry*
28 *court, or other collaborative justice court available for improving*
29 *the mental health of the defendant.*

30 (e) If the criminal-~~charge~~ *action* against the defendant is
31 dismissed, the defendant shall be released from any commitment
32 ordered under this section, but without prejudice to the initiation
33 of any proceedings that may be appropriate under the
34 Lanterman-Petris-Short ~~Act, Part Act~~ *(Part 1* (commencing with
35 Section 5000) of Division 5 of the Welfare and Institutions ~~Code~~
36 *Code*).

37 (f) As used in this chapter, "community program director" means
38 the person, agency, or entity designated by the State Department
39 of State Hospitals pursuant to Section 1605 of this code and Section
40 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, “secure treatment facility” shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

(h) Nothing in this section shall preclude a defendant from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing a treatment facility or outpatient program to involuntarily administer antipsychotic medication to a person being treated as incompetent to stand trial.

~~SECTION 1. Section 1370 of the Penal Code is amended to read:~~

~~1370. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.~~

~~(B) If the defendant is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent.~~

~~(i) In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility, including a local county jail treatment facility, approved by the community program director that will promote the defendant’s speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.~~

~~(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment~~

1 of the mentally disordered unless the court makes specific findings
2 on the record that an alternative placement would provide more
3 appropriate treatment for the defendant and would not pose a
4 danger to the health and safety of others.

5 (iii) If the action against the defendant who has been found
6 mentally incompetent is on a complaint charging a felony offense
7 specified in Section 290 and the defendant has been denied bail
8 pursuant to subdivision (b) of Section 12 of Article I of the
9 California Constitution because the court has found, based upon
10 clear and convincing evidence, a substantial likelihood that the
11 person's release would result in great bodily harm to others, the
12 court shall order that the defendant be delivered by the sheriff to
13 a state hospital for the care and treatment of the mentally disordered
14 unless the court makes specific findings on the record that an
15 alternative placement would provide more appropriate treatment
16 for the defendant and would not pose a danger to the health and
17 safety of others.

18 (iv) The clerk of the court shall notify the Department of Justice
19 in writing of any finding of mental incompetence with respect to
20 a defendant who is subject to clause (ii) or (iii) for inclusion in his
21 or her state summary criminal history information.

22 (C) Upon the filing of a certificate of restoration to competence,
23 the court shall order that the defendant be returned to court in
24 accordance with Section 1372. The court shall transmit a copy of
25 its order to the community program director or a designee.

26 (D) A defendant charged with a violent felony may not be
27 delivered to a state hospital or treatment facility pursuant to this
28 subdivision unless the state hospital or treatment facility has a
29 secured perimeter or a locked and controlled treatment facility,
30 and the judge determines that the public safety will be protected.

31 (E) For purposes of this paragraph, "violent felony" means an
32 offense specified in subdivision (c) of Section 667.5.

33 (F) A defendant charged with a violent felony may be placed
34 on outpatient status, as specified in Section 1600, only if the court
35 finds that the placement will not pose a danger to the health or
36 safety of others. If the court places a defendant charged with a
37 violent felony on outpatient status, as specified in Section 1600,
38 the court shall serve copies of the placement order on defense
39 counsel, the sheriff in the county where the defendant will be

1 placed, and the district attorney for the county in which the violent
2 felony charges are pending against the defendant.

3 ~~(2) Prior to making the order directing that the defendant be~~
4 ~~confined in a state hospital or other treatment facility or placed on~~
5 ~~outpatient status, the court shall proceed as follows:~~

6 ~~(A) The court shall order the community program director or a~~
7 ~~designee to evaluate the defendant and to submit to the court within~~
8 ~~15 judicial days of the order a written recommendation as to~~
9 ~~whether the defendant should be required to undergo outpatient~~
10 ~~treatment, or be committed to a state hospital or to any other~~
11 ~~treatment facility. A person shall not be admitted to a state hospital~~
12 ~~or other treatment facility or placed on outpatient status under this~~
13 ~~section without having been evaluated by the community program~~
14 ~~director or a designee. The community program director or~~
15 ~~designee shall evaluate the appropriate placement for the defendant~~
16 ~~between a state hospital or a local county jail treatment facility~~
17 ~~based upon guidelines provided by the State Department of State~~
18 ~~Hospitals. If a local county jail treatment facility is selected, the~~
19 ~~State Department of State Hospitals shall provide treatment at the~~
20 ~~county jail treatment facility and reimburse the county jail~~
21 ~~treatment facility for the reasonable costs of the bed during the~~
22 ~~treatment. The six-month limitation in Section 1369.1 shall not~~
23 ~~apply to individuals deemed incompetent to stand trial who are~~
24 ~~being treated to restore competency within a county jail treatment~~
25 ~~facility pursuant to this section.~~

26 ~~(B) The court shall hear and determine whether the defendant~~
27 ~~lacks capacity to make decisions regarding the administration of~~
28 ~~antipsychotic medication. The court shall consider opinions in the~~
29 ~~reports prepared pursuant to subdivision (a) of Section 1369, as~~
30 ~~applicable to the issue of whether the defendant lacks capacity to~~
31 ~~make decisions regarding the administration of antipsychotic~~
32 ~~medication, and shall proceed as follows:~~

33 ~~(i) The court shall hear and determine whether any of the~~
34 ~~following is true:~~

35 ~~(I) The defendant lacks capacity to make decisions regarding~~
36 ~~antipsychotic medication, the defendant's mental disorder requires~~
37 ~~medical treatment with antipsychotic medication, and, if the~~
38 ~~defendant's mental disorder is not treated with antipsychotic~~
39 ~~medication, it is probable that serious harm to the physical or~~
40 ~~mental health of the patient will result. Probability of serious harm~~

1 to the physical or mental health of the defendant requires evidence
2 that the defendant is presently suffering adverse effects to his or
3 her physical or mental health, or the defendant has previously
4 suffered these effects as a result of a mental disorder and his or
5 her condition is substantially deteriorating. The fact that a
6 defendant has a diagnosis of a mental disorder does not alone
7 establish probability of serious harm to the physical or mental
8 health of the defendant.

9 (II) The defendant is a danger to others, in that the defendant
10 has inflicted, attempted to inflict, or made a serious threat of
11 inflicting substantial physical harm on another while in custody,
12 or the defendant had inflicted, attempted to inflict, or made a
13 serious threat of inflicting substantial physical harm on another
14 that resulted in his or her being taken into custody, and the
15 defendant presents, as a result of mental disorder or mental defect,
16 a demonstrated danger of inflicting substantial physical harm on
17 others. Demonstrated danger may be based on an assessment of
18 the defendant's present mental condition, including a consideration
19 of past behavior of the defendant within six years prior to the time
20 the defendant last attempted to inflict, inflicted, or threatened to
21 inflict substantial physical harm on another, and other relevant
22 evidence.

23 (III) The people have charged the defendant with a serious crime
24 against the person or property, involuntary administration of
25 antipsychotic medication is substantially likely to render the
26 defendant competent to stand trial, the medication is unlikely to
27 have side effects that interfere with the defendant's ability to
28 understand the nature of the criminal proceedings or to assist
29 counsel in the conduct of a defense in a reasonable manner, less
30 intrusive treatments are unlikely to have substantially the same
31 results, and antipsychotic medication is in the patient's best medical
32 interest in light of his or her medical condition.

33 (ii) If the court finds any of the conditions described in clause
34 (i) to be true, the court shall issue an order authorizing involuntary
35 administration of antipsychotic medication to the defendant when
36 and as prescribed by the defendant's treating psychiatrist at any
37 facility housing the defendant for purposes of this chapter. The
38 order shall be valid for no more than one year, pursuant to
39 subparagraph (A) of paragraph (7). The court shall not order
40 involuntary administration of psychotropic medication under

1 subelause (III) of clause (i) unless the court has first found that the
2 defendant does not meet the criteria for involuntary administration
3 of psychotropic medication under subelause (I) of clause (i) and
4 does not meet the criteria under subelause (II) of clause (i).

5 (iii) In all cases, the treating hospital, facility, or program may
6 administer medically appropriate antipsychotic medication
7 prescribed by a psychiatrist in an emergency as described in
8 subdivision (m) of Section 5008 of the Welfare and Institutions
9 Code.

10 (iv) If the court has determined that the defendant has the
11 capacity to make decisions regarding antipsychotic medication,
12 and if the defendant, with advice of his or her counsel, consents,
13 the court order of commitment shall include confirmation that
14 antipsychotic medication may be given to the defendant as
15 prescribed by a treating psychiatrist pursuant to the defendant's
16 consent. The commitment order shall also indicate that, if the
17 defendant withdraws consent for antipsychotic medication, after
18 the treating psychiatrist complies with the provisions of
19 subparagraph (C), the defendant shall be returned to court for a
20 hearing in accordance with subparagraphs (C) and (D) regarding
21 whether antipsychotic medication shall be administered
22 involuntarily.

23 (v) If the court has determined that the defendant has the
24 capacity to make decisions regarding antipsychotic medication
25 and if the defendant, with advice from his or her counsel, does not
26 consent, the court order for commitment shall indicate that, after
27 the treating psychiatrist complies with the provisions of
28 subparagraph (C), the defendant shall be returned to court for a
29 hearing in accordance with subparagraphs (C) and (D) regarding
30 whether antipsychotic medication shall be administered
31 involuntarily.

32 (vi) Any report made pursuant to paragraph (1) of subdivision
33 (b) shall include a description of any antipsychotic medication
34 administered to the defendant and its effects and side effects,
35 including effects on the defendant's appearance or behavior that
36 would affect the defendant's ability to understand the nature of
37 the criminal proceedings or to assist counsel in the conduct of a
38 defense in a reasonable manner. During the time the defendant is
39 confined in a state hospital or other treatment facility or placed on
40 outpatient status, either the defendant or the people may request

1 that the court review any order made pursuant to this subdivision.
2 The defendant, to the same extent enjoyed by other patients in the
3 state hospital or other treatment facility, shall have the right to
4 contact the patients' rights advocate regarding his or her rights
5 under this section.

6 (C) If the defendant consented to antipsychotic medication as
7 described in clause (iv) of subparagraph (B), but subsequently
8 withdraws his or her consent, or, if involuntary antipsychotic
9 medication was not ordered pursuant to clause (v) of subparagraph
10 (B), and the treating psychiatrist determines that antipsychotic
11 medication has become medically necessary and appropriate, the
12 treating psychiatrist shall make efforts to obtain informed consent
13 from the defendant for antipsychotic medication. If informed
14 consent is not obtained from the defendant, and the treating
15 psychiatrist is of the opinion that the defendant lacks capacity to
16 make decisions regarding antipsychotic medication based on the
17 conditions described in subclause (I) or (II) of clause (i) of
18 subparagraph (B), the treating psychiatrist shall certify whether
19 the lack of capacity and any applicable conditions described above
20 exist. That certification shall contain an assessment of the current
21 mental status of the defendant and the opinion of the treating
22 psychiatrist that involuntary antipsychotic medication has become
23 medically necessary and appropriate.

24 (D) (i) If the treating psychiatrist certifies that antipsychotic
25 medication has become medically necessary and appropriate
26 pursuant to subparagraph (C), antipsychotic medication may be
27 administered to the defendant for not more than 21 days, provided,
28 however, that, within 72 hours of the certification, the defendant
29 is provided a medication review hearing before an administrative
30 law judge to be conducted at the facility where the defendant is
31 receiving treatment. The treating psychiatrist shall present the case
32 for the certification for involuntary treatment and the defendant
33 shall be represented by an attorney or a patients' rights advocate.
34 The attorney or patients' rights advocate shall be appointed to meet
35 with the defendant no later than one day prior to the medication
36 review hearing to review the defendant's rights at the medication
37 review hearing, discuss the process, answer questions or concerns
38 regarding involuntary medication or the hearing, assist the
39 defendant in preparing for the hearing and advocating for his or
40 her interests at the hearing, review the panel's final determination

1 following the hearing, advise the defendant of his or her right to
2 judicial review of the panel's decision, and provide the defendant
3 with referral information for legal advice on the subject. The
4 defendant shall also have the following rights with respect to the
5 medication review hearing:

6 (I) ~~To being given timely access to the defendant's records.~~

7 (II) ~~To be present at the hearing, unless the defendant waives~~
8 ~~that right.~~

9 (III) ~~To present evidence at the hearing.~~

10 (IV) ~~To question persons presenting evidence supporting~~
11 ~~involuntary medication.~~

12 (V) ~~To make reasonable requests for attendance of witnesses~~
13 ~~on the defendant's behalf.~~

14 (VI) ~~To a hearing conducted in an impartial and informal~~
15 ~~manner.~~

16 (ii) ~~If the administrative law judge determines that the defendant~~
17 ~~either meets the criteria specified in subclause (I) of clause (i) of~~
18 ~~subparagraph (B), or meets the criteria specified in subclause (II)~~
19 ~~of clause (i) of subparagraph (B), then antipsychotic medication~~
20 ~~may continue to be administered to the defendant for the 21-day~~
21 ~~certification period. Concurrently with the treating psychiatrist's~~
22 ~~certification, the treating psychiatrist shall file a copy of the~~
23 ~~certification and a petition with the court for issuance of an order~~
24 ~~to administer antipsychotic medication beyond the 21-day~~
25 ~~certification period. For purposes of this subparagraph, the treating~~
26 ~~psychiatrist shall not be required to pay or deposit any fee for the~~
27 ~~filing of the petition or other document or paper related to the~~
28 ~~petition.~~

29 (iii) ~~If the administrative law judge disagrees with the~~
30 ~~certification, medication may not be administered involuntarily~~
31 ~~until the court determines that antipsychotic medication should be~~
32 ~~administered pursuant to this section.~~

33 (iv) ~~The court shall provide notice to the prosecuting attorney~~
34 ~~and to the attorney representing the defendant, and shall hold a~~
35 ~~hearing, no later than 18 days from the date of the certification, to~~
36 ~~determine whether antipsychotic medication should be ordered~~
37 ~~beyond the certification period.~~

38 (v) ~~If, as a result of the hearing, the court determines that~~
39 ~~antipsychotic medication should be administered beyond the~~

1 certification period, the court shall issue an order authorizing the
2 administration of that medication.

3 (vi) The court shall render its decision on the petition and issue
4 its order no later than three calendar days after the hearing and, in
5 any event, no later than the expiration of the 21-day certification
6 period.

7 (vii) If the administrative law judge upholds the certification
8 pursuant to clause (ii), the court may, for a period not to exceed
9 14 days, extend the certification and continue the hearing pursuant
10 to stipulation between the parties or upon a finding of good cause.
11 In determining good cause, the court may review the petition filed
12 with the court, the administrative law judge's order, and any
13 additional testimony needed by the court to determine if it is
14 appropriate to continue medication beyond the 21-day certification
15 and for a period of up to 14 days.

16 (viii) The district attorney, county counsel, or representative of
17 any facility where a defendant found incompetent to stand trial is
18 committed may petition the court for an order to administer
19 involuntary medication pursuant to the criteria set forth in
20 subclauses (II) and (III) of clause (i) of subparagraph (B). The
21 order is reviewable as provided in paragraph (7).

22 (3) When the court orders that the defendant be confined in a
23 state hospital or other public or private treatment facility, the court
24 shall provide copies of the following documents which shall be
25 taken with the defendant to the state hospital or other treatment
26 facility where the defendant is to be confined:

27 (A) The commitment order, including a specification of the
28 charges.

29 (B) A computation or statement setting forth the maximum term
30 of commitment in accordance with subdivision (e).

31 (C) A computation or statement setting forth the amount of
32 credit for time served, if any, to be deducted from the maximum
33 term of commitment.

34 (D) State summary criminal history information.

35 (E) Any arrest reports prepared by the police department or
36 other law enforcement agency.

37 (F) Any court-ordered psychiatric examination or evaluation
38 reports.

39 (G) The community program director's placement
40 recommendation report.

~~(H) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or any pending Section 1368 proceeding arising out of a charge of a Section 290 offense.~~

~~(4) When the defendant is committed to a treatment facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a treatment facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of any finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.~~

~~(5) When directing that the defendant be confined in a state hospital pursuant to this subdivision, the court shall select the hospital in accordance with the policies established by the State Department of State Hospitals.~~

~~(6) (A) If the defendant is committed or transferred to a state hospital pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, transfer the defendant to a state hospital or to another public or private treatment facility approved by the community program director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). Where either the defendant or the prosecutor chooses to contest either kind of order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as~~

1 are used in conducting probation revocation hearings pursuant to
2 Section 1203.2.

3 Prior to making an order for transfer under this section, the court
4 shall notify the defendant, the attorney of record for the defendant,
5 the prosecuting attorney, and the community program director or
6 a designee.

7 (B) If the defendant is initially committed to a state hospital or
8 secure treatment facility pursuant to clause (ii) or (iii) of
9 subparagraph (B) of paragraph (1) and is subsequently transferred
10 to any other facility, copies of the documents specified in paragraph
11 (3) shall be taken with the defendant to each subsequent facility
12 to which the defendant is transferred. The transferring facility shall
13 also notify the appropriate law enforcement agency or agencies
14 having local jurisdiction at the site of the new facility that the
15 defendant is a person subject to clause (ii) or (iii) of subparagraph
16 (B) of paragraph (1).

17 (7) (A) An order by the court authorizing involuntary
18 medication of the defendant shall be valid for no more than one
19 year. The court shall review the order at the time of the review of
20 the initial report and the six-month progress reports pursuant to
21 paragraph (1) of subdivision (b) to determine if the grounds for
22 the authorization remain. In the review, the court shall consider
23 the reports of the treating psychiatrist or psychiatrists and the
24 defendant's patients' rights advocate or attorney. The court may
25 require testimony from the treating psychiatrist or psychiatrists
26 and the patients' rights advocate or attorney, if necessary. The
27 court may continue the order authorizing involuntary medication
28 for up to another six months, or vacate the order, or make any other
29 appropriate order.

30 (B) Within 60 days before the expiration of the one-year
31 involuntary medication order, the district attorney, county counsel,
32 or representative of any facility where a defendant found
33 incompetent to stand trial is committed may petition the committing
34 court for a renewal, subject to the same conditions and
35 requirements as in subparagraph (A). The petition shall include
36 the basis for involuntary medication set forth in clause (i) of
37 subparagraph (B) of paragraph (2). Notice of the petition shall be
38 provided to the defendant, the defendant's attorney, and the district
39 attorney. The court shall hear and determine whether the defendant
40 continues to meet the criteria set forth in clause (i) of subparagraph

1 (B) of paragraph (2). The hearing on any petition to renew an order
2 for involuntary medication shall be conducted prior to the
3 expiration of the current order.

4 (b) (1) Within 90 days of a commitment made pursuant to
5 subdivision (a), the medical director of the state hospital or other
6 treatment facility to which the defendant is confined shall make a
7 written report to the court and the community program director
8 for the county or region of commitment, or a designee, concerning
9 the defendant's progress toward recovery of mental competence
10 and whether the administration of antipsychotic medication remains
11 necessary. Where the defendant is on outpatient status, the
12 outpatient treatment staff shall make a written report to the
13 community program director concerning the defendant's progress
14 toward recovery of mental competence. Within 90 days of
15 placement on outpatient status, the community program director
16 shall report to the court on this matter. If the defendant has not
17 recovered mental competence, but the report discloses a substantial
18 likelihood that the defendant will regain mental competence in the
19 foreseeable future, the defendant shall remain in the state hospital
20 or other treatment facility or on outpatient status. Thereafter, at
21 six-month intervals or until the defendant becomes mentally
22 competent, where the defendant is confined in a treatment facility,
23 the medical director of the hospital or person in charge of the
24 facility shall report in writing to the court and the community
25 program director or a designee regarding the defendant's progress
26 toward recovery of mental competence and whether the
27 administration of antipsychotic medication remains necessary.
28 Where the defendant is on outpatient status, after the initial 90-day
29 report, the outpatient treatment staff shall report to the community
30 program director on the defendant's progress toward recovery,
31 and the community program director shall report to the court on
32 this matter at six-month intervals. A copy of these reports shall be
33 provided to the prosecutor and defense counsel by the court. If the
34 report indicates that there is no substantial likelihood that the
35 defendant will regain mental competence in the foreseeable future,
36 the committing court shall order the defendant to be returned to
37 the court for proceedings pursuant to paragraph (2) of subdivision
38 (c). The court shall transmit a copy of its order to the community
39 program director or a designee.

1 ~~(2) Where the court has issued an order authorizing the treating~~
2 ~~facility to involuntarily administer antipsychotic medication to the~~
3 ~~defendant, the reports made pursuant to paragraph (1) concerning~~
4 ~~the defendant's progress toward regaining competency shall also~~
5 ~~consider the issue of involuntary medication. Each report shall~~
6 ~~include, but is not limited to, all the following:~~

7 ~~(A) Whether or not the defendant has the capacity to make~~
8 ~~decisions concerning antipsychotic medication.~~

9 ~~(B) If the defendant lacks capacity to make decisions concerning~~
10 ~~antipsychotic medication, whether the defendant risks serious harm~~
11 ~~to his or her physical or mental health if not treated with~~
12 ~~antipsychotic medication.~~

13 ~~(C) Whether or not the defendant presents a danger to others if~~
14 ~~he or she is not treated with antipsychotic medication.~~

15 ~~(D) Whether the defendant has a mental illness for which~~
16 ~~medications are the only effective treatment.~~

17 ~~(E) Whether there are any side effects from the medication~~
18 ~~currently being experienced by the defendant that would interfere~~
19 ~~with the defendant's ability to collaborate with counsel.~~

20 ~~(F) Whether there are any effective alternatives to medication.~~

21 ~~(G) How quickly the medication is likely to bring the defendant~~
22 ~~to competency.~~

23 ~~(H) Whether the treatment plan includes methods other than~~
24 ~~medication to restore the defendant to competency.~~

25 ~~(I) A statement, if applicable, that no medication is likely to~~
26 ~~restore the defendant to competency.~~

27 ~~(3) After reviewing the reports, the court shall determine whether~~
28 ~~or not grounds for the order authorizing involuntary administration~~
29 ~~of antipsychotic medication still exist and shall do one of the~~
30 ~~following:~~

31 ~~(A) If the original grounds for involuntary medication still exist,~~
32 ~~the order authorizing the treating facility to involuntarily administer~~
33 ~~antipsychotic medication to the defendant shall remain in effect.~~

34 ~~(B) If the original grounds for involuntary medication no longer~~
35 ~~exist, and there is no other basis for involuntary administration of~~
36 ~~antipsychotic medication, the order for the involuntary~~
37 ~~administration of antipsychotic medication shall be vacated.~~

38 ~~(C) If the original grounds for involuntary medication no longer~~
39 ~~exist, and the report states that there is another basis for involuntary~~
40 ~~administration of antipsychotic medication, the court shall set a~~

1 hearing within 21 days to determine whether the order for the
2 involuntary administration of antipsychotic medication shall be
3 vacated or whether a new order for the involuntary administration
4 of antipsychotic medication shall be issued. The hearing shall
5 proceed as set forth in subparagraph (B) of paragraph (2) of
6 subdivision (a).

7 (4) Any defendant who has been committed or has been on
8 outpatient status for 18 months and is still hospitalized or on
9 outpatient status shall be returned to the committing court where
10 a hearing shall be held pursuant to the procedures set forth in
11 Section 1369. The court shall transmit a copy of its order to the
12 community program director or a designee.

13 (5) If it is determined by the court that no treatment for the
14 defendant's mental impairment is being conducted, the defendant
15 shall be returned to the committing court. The court shall transmit
16 a copy of its order to the community program director or a
17 designee.

18 (6) At each review by the court specified in this subdivision,
19 the court shall determine if the security level of housing and
20 treatment is appropriate and may make an order in accordance
21 with its determination. If the court determines that the defendant
22 shall continue to be treated in the state hospital or on an outpatient
23 basis, the court shall determine issues concerning administration
24 of antipsychotic medication, as set forth in subparagraph (B) of
25 paragraph (2) of subdivision (a).

26 (c) (1) At the end of three years from the date of commitment
27 or a period of commitment equal to the maximum term of
28 imprisonment provided by law for the most serious offense charged
29 in the information, indictment, or misdemeanor complaint,
30 whichever is shorter, a defendant who has not recovered mental
31 competence shall be returned to the committing court. The court
32 shall notify the community program director or a designee of the
33 return and of any resulting court orders.

34 (2) Whenever any defendant is returned to the court pursuant
35 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this
36 subdivision and it appears to the court that the defendant is gravely
37 disabled, as defined in subparagraph (B) of paragraph (1) of
38 subdivision (h) of Section 5008 of the Welfare and Institutions
39 Code, the court shall order the conservatorship investigator of the
40 county of commitment of the defendant to initiate conservatorship

1 proceedings for the defendant pursuant to Chapter 3 (commencing
2 with Section 5350) of Part 1 of Division 5 of the Welfare and
3 Institutions Code. Any hearings required in the conservatorship
4 proceedings shall be held in the superior court in the county that
5 ordered the commitment. The court shall transmit a copy of the
6 order directing initiation of conservatorship proceedings to the
7 community program director or a designee, the sheriff and the
8 district attorney of the county in which criminal charges are
9 pending, and the defendant's counsel of record. The court shall
10 notify the community program director or a designee, the sheriff
11 and district attorney of the county in which criminal charges are
12 pending, and the defendant's counsel of record of the outcome of
13 the conservatorship proceedings.

14 (3) If a change in placement is proposed for a defendant who
15 is committed pursuant to subparagraph (B) of paragraph (1) of
16 subdivision (h) of Section 5008 of the Welfare and Institutions
17 Code, the court shall provide notice and an opportunity to be heard
18 with respect to the proposed placement of the defendant to the
19 sheriff and the district attorney of the county in which criminal
20 charges are pending.

21 (4) Where the defendant is confined in a treatment facility, a
22 copy of any report to the committing court regarding the
23 defendant's progress toward recovery of mental competence shall
24 be provided by the committing court to the prosecutor and to the
25 defense counsel.

26 (d) The criminal action remains subject to dismissal pursuant
27 to Section 1385. If the criminal action is dismissed, the court shall
28 transmit a copy of the order of dismissal to the community program
29 director or a designee.

30 (e) If the criminal charge against the defendant is dismissed,
31 the defendant shall be released from any commitment ordered
32 under this section, but without prejudice to the initiation of any
33 proceedings that may be appropriate under the
34 Lanterman-Petris-Short Act, Part 1 (commencing with Section
35 5000) of Division 5 of the Welfare and Institutions Code.

36 (f) As used in this chapter, "community program director" means
37 the person, agency, or entity designated by the State Department
38 of State Hospitals pursuant to Section 1605 of this code and Section
39 4360 of the Welfare and Institutions Code.

1 ~~(g) For the purpose of this section, “secure treatment facility”~~
2 ~~shall not include, except for state mental hospitals, state~~
3 ~~developmental centers, and correctional treatment facilities, any~~
4 ~~facility licensed pursuant to Chapter 2 (commencing with Section~~
5 ~~1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter~~
6 ~~3.2 (commencing with Section 1569) of, Division 2 of the Health~~
7 ~~and Safety Code, or any community board and care facility.~~

8 ~~(h) Nothing in this section shall preclude a defendant from filing~~
9 ~~a petition for habeas corpus to challenge the continuing validity~~
10 ~~of an order authorizing a treatment facility or outpatient program~~
11 ~~to involuntarily administer antipsychotic medication to a person~~
12 ~~being treated as incompetent to stand trial.~~

13 *SEC. 2. (a) Section 1.1 of this bill incorporates amendments*
14 *to Section 1370 of the Penal Code proposed by both this bill and*
15 *Assembly Bill 2625. It shall only become operative if (1) both bills*
16 *are enacted and become effective on or before January 1, 2015,*
17 *(2) each bill amends Section 1370 of the Penal Code, (3) Senate*
18 *Bill 1412 is not enacted or as enacted does not amend that section,*
19 *and (4) this bill is enacted after Assembly Bill 2625, in which case*
20 *Sections 1, 1.2, and 1.3 of this bill shall not become operative.*

21 *(b) Section 1.2 of this bill incorporates amendments to Section*
22 *1370 of the Penal Code proposed by both this bill and Senate Bill*
23 *1412. It shall only become operative if (1) both bills are enacted*
24 *and become effective on or before January 1, 2015, (2) each bill*
25 *amends Section 1370 of the Penal Code, (3) Assembly Bill 2625*
26 *is not enacted or as enacted does not amend that section, and (4)*
27 *this bill is enacted after Senate Bill 1412 in which case Sections*
28 *1, 1.1, and 1.3 of this bill shall not become operative.*

29 *(c) Section 1.3 of this bill incorporates amendments to Section*
30 *1370 of the Penal Code proposed by this bill, Assembly Bill 2625,*
31 *and Senate Bill 1412. It shall only become operative if (1) all three*
32 *bills are enacted and become effective on or before January 1,*
33 *2015, (2) all three bills amend Section 1370 of the Penal Code,*
34 *and (3) this bill is enacted after Assembly Bill 2625 and Senate*
35 *Bill 1412, in which case Sections 1, 1.1, and 1.2 of this bill shall*
36 *not become operative.*